

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

CASE NO.: 1:24-cv-00779-JPH-MKK

MAX MINDS, LLC,

Plaintiff,

v.

TRIANGLE EXPERIENCE GROUP, INC.,
ROBERT EDWARD CLARE, JEFFREY
MASE, KEVIN G MULLICAN and JOHN
DOES 1-10,

Defendants.

SEALED EXHIBIT 2 TO J. CAMPBELL MILLER DECLARATION

Exhibit

2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

MAX MINDS, LLC,

Plaintiff,

v.

Case No.

TRIANGLE EXPERIENCE GROUP,
INC., ROBERT EDWARD CLARE,
JEFFREY MASE, KEVIN G MULLICAN
AND JOHN DOES 1-10,

1:24-cv-00779-
JPH-MKK

Defendants.

DEPOSITION OF
KEVIN MULLICAN

DATE: Tuesday, November 19, 2024

TIME: 1:06 p.m.

LOCATION: Remote Proceeding
Los Angeles, CA 90013

OFFICIATED BY: Valenci McAlpin

JOB NO.: 7028327

*PAGES 67-72 ARE CONFIDENTIAL AND PLACED UNDER
SEPARATE COVER.

A P P E A R A N C E S

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ON BEHALF OF DEFENDANTS TRIANGLE EXPERIENCE GROUP, INC.,
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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Robert Edward Clare, Defendant (by videoconference)

Rebecca Kornhaus, SRIPLAW, Representative (by
videoconference)

Brandon Fischer, CEO of Max Minds (by
videoconference)

I N D E X

EXAMINATION:

PAGE

By Mr. Rothman

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit 37

Email from Brandon Fischer to
Kevin Mullican with Subject,
"Looking Forward to Speaking
with You Upon Your Return"

32

Exhibit 38

Cole Whitman Completed Pull
Request

60

Exhibit 39

Map - Confidential

66

P R O C E E D I N G S

THE OFFICER: Good afternoon. My name is Valenci McAlpin. I am the certified deposition officer assigned by Veritext to take the record of this proceeding. We are now on record at 1:06 p.m.

This is the deposition of Kevin Mullican taken in the matter of Max Minds, LLC vs. Triangle Experience Group, Inc., et al. on Tuesday, November 19, 2024, at Los Angeles, California 90013.

I am a notary authorized to take acknowledgements and administer oaths in California. Parties agree that as the deposition officer, I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographic means; and
- shall constitute written stipulation of such.

1 At this time, will everyone in attendance
2 please identify yourself for the record, beginning with
3 the taking attorney.

4 MR. ROTHMAN: Joel Rothman, also Campbell
5 Miller, and our client, Brandon Fischer, for Max Minds.

6 MR. DELANEY: Raighne Delaney, counsel
7 for the defendant Triangle Experience Group with Rob
8 Clare, the CEO of the group. And Kevin Mullican is
9 being deposed.

10 THE OFFICER: Thank you. Hearing no
11 objection, I will now swear in the witness.

12 Will you please raise your right hand?
13 WHEREUPON,

14 KEVIN MULLICAN,
15 called as a witness and having been first duly sworn to
16 tell the truth, the whole truth, and nothing but the
17 truth, was examined and testified as follows:

18 THE OFFICER: Thank you.

19 Counsel, you may begin.

20 MR. ROTHMAN: Thank you.

21 EXAMINATION

22 BY MR. ROTHMAN:

23 Q Good afternoon, Mr. Mullican.

24 A Good afternoon.

25 Q So are you employed?

1 A I am employed.

2 Q Where?

3 A I am the chief technical officer of Triangle
4 Experience Group.

5 Q And how long have you held that position?

6 A Since around 2014.

7 Q Can you tell me generally what your duties and
8 responsibilities are as chief technical officer of
9 Triangle Experience Group?

10 A I am responsible for the technical operations
11 and technical implementations that Triangle Experience
12 Group creates.

13 Q Do you have an ownership interest in Triangle
14 Experience Group?

15 A I do not.

16 Q Any ownership interest in any parent company
17 or any subsidiary organization to TEG?

18 A No.

19 Q Okay. I looked at your LinkedIn profile. It
20 has you with a title of vice president of technology at
21 Magnopus. What is Magnopus?

22 A It is a company unrelated to Triangle
23 Experience Group in a different industry.

24 Q Okay. Can you tell me what that company is,
25 what industry it's in?

1 A Media and entertainment.

2 Q Okay. Do you in fact work as VP of technology
3 for this other company, as well as at the same time
4 being CTO of TEG?

5 A Yes.

6 Q Okay. Are there any other companies that you
7 work for besides Magnopus and TEG?

8 A Yes.

9 Q What are those other companies?

10 A I operate a consultancy called the Mullican
11 Group.

12 Q Okay. And what does the Mullican Group do?

13 A Hardware and software development.

14 Q So I think you indicated you began with TEG in
15 2014. Did I get that correct?

16 A Yes.

17 Q Okay. Just looking at your LinkedIn profile,
18 it has you as CTO there beginning August of 2017.

19 A That was the most recent.

20 Q Most recent what?

21 A So -- so my employment at TEG has not been
22 continuous.

23 Q Oh, okay. So explain to me what that means.
24 There was a period of time sometime between 2014 and
25 2017 when you weren't working for TEG?

1 A Correct.

2 Q And what period was that?

3 A I don't recall.

4 Q Okay. Was it months or years? Do you
5 remember?

6 A I don't recall.

7 Q Okay. But you've been working as CTO for TEG
8 continuously since August of 2017?

9 A Yes.

10 Q Okay. Great. There was deposition taken --

11 A Hold on. No -- no.

12 Q No?

13 A There was a period of time that I also did not
14 work full-time for TEG after 2017.

15 Q Okay. When was that?

16 A I don't recall the exact timeframe.

17 Q Months, years?

18 A Months.

19 Q Months. Okay. You don't remember the
20 approximate years?

21 A I do not.

22 Q Okay. I've seen you referred to as a partner
23 in TEG in some documents. Do you understand what the
24 reference to you as a partner means?

25 MR. DELANEY: Objection.

1 THE OFFICER: What was that?

2 MR. DELANEY: I said objection.

3 MR. ROTHMAN: I think Mr. Delaney put an
4 objection on the record.

5 THE OFFICER: Okay. What was the
6 objection, sir?

7 MR. DELANEY: Well, I thought that the
8 question was somewhat vague, and I didn't appreciate the
9 form of it. So I'm sure Mr. Rothman doesn't want me to
10 explain all of my objections, so I'm happy to just say
11 objection.

12 MR. ROTHMAN: Yeah. I think an objection
13 to form is, you know, what Mr. Delaney was going for.
14 It's perfectly fine.

15 You can answer the question,
16 Mr. Mullican, if you understand it.

17 THE WITNESS: The term partner takes
18 different -- different meanings in different contexts.

19 BY MR. ROTHMAN:

20 Q Right. Have you ever heard yourself referred
21 to as a partner of TEG?

22 A I don't recall.

23 Q Okay. There was a deposition of Mr. Clare
24 taken in this case on October 30, 2024. Have you
25 reviewed the transcript of that deposition?

1 A I have not reviewed the entire transcript.

2 Q Part of the transcript you did review?

3 A I have reviewed parts of the transcript.

4 Q Okay. All right. I want to ask you some
5 questions about that, but before we get there, let me
6 show you a document. First of all, were you given
7 any -- you're there in Los Angeles, I understand. Were
8 you given any -- sent any paper documents or any
9 exhibits in electronic format to review before the
10 deposition?

11 A Other than the discussion about the --
12 Mr. Clare's transcript?

13 Q Other than his transcript, you said you
14 reviewed parts of it. Were you given any exhibits, for
15 example, from Mr. Clare's deposition or any other
16 documents?

17 A I was not sent anything specific to this
18 deposition.

19 Q Okay. All right. Let me -- okay. I'm going
20 to share my screen throughout the deposition and show
21 you some documents. This is one of those occasions
22 where I'm going to do that. So, you know, let me know
23 if you have any problems seeing these things. You
24 should be looking at a document that's marked Exhibit
25 No. 30.

1 The title is, "Triangle Experience Group,
2 Inc.'s Second Amended Answers and Objections to Max
3 Minds, LLC First Set of Preliminary Injunction
4 Interrogatories." Do you see that?

5 A I see the document that you are showing on the
6 screen.

7 Q Right. So have you ever previously reviewed a
8 set of -- sorry. Have you ever previously reviewed
9 answers and objections to interrogatories in this case?

10 A Yes.

11 Q Okay. What was the context that you reviewed
12 the interrogatory answers? What was it that you were
13 doing? Why were you doing the review of them, if I can
14 just understand what was going on? And don't tell me
15 any discussions you had with Counsel.

16 MR. DELANEY: Objection. Compound.

17 MR. ROTHMAN: You can answer,
18 Mr. Mullican.

19 THE WITNESS: I don't understand the
20 question.

21 BY MR. ROTHMAN:

22 Q So were you given the interrogatory answers to
23 review for purposes of determining whether or not they
24 were accurate?

25 A I still don't -- I'm sorry. I still don't

1 understand the question.

2 Q Okay. You said you had reviewed answers to
3 interrogatories. Do you recall reviewing a set of
4 answers that looked identical on the first page to what
5 we're looking at now?

6 A The first page you're showing me has no
7 questions on it, so I can't answer that question.

8 Q Okay. The first question, do you see it now?

9 A I do.

10 Q Okay. Do you recall reviewing a set of
11 interrogatories that had that first question in it?

12 A Yes.

13 Q Okay. All right. And do you know why you
14 were reviewing those? Was it in preparation for this
15 deposition? Was it in trying to help answer the
16 interrogatories? Do you have any idea?

17 A I'm mentioned in it.

18 Q You're mentioned in it. So do you recall when
19 it was that you reviewed these answers? Was it recently
20 as in the last week, or two weeks, or was it months ago?

21 A It was some time ago, but I don't recall the
22 exact timeframe.

23 Q Okay. So it indicates in response to one that
24 you provided information to answer the interrogatories,
25 as well as Jeff Mase and Robert Clare. Does that help

1 refresh your memory as to why it was you were reviewing
2 interrogatory answers?

3 A I don't -- I'm not sure.

4 Q Okay. Number 2 asks for individuals with
5 knowledge about the facts in this case, and if we go
6 down to number 5, your name is listed; right? Do you
7 see that there?

8 A Yes.

9 Q Okay. Do me a favor. Just read this to
10 yourself and tell me when you get to the bottom, so I
11 can scroll down and let you finish reading it.

12 A Okay. Your sharing is almost unintelligibly
13 small. I'm sorry. I'm having trouble reading it.

14 Q Really? Okay. Are you doing this deposition
15 on a phone?

16 A I am doing this deposition on a phone.

17 Q Okay. Do you have a computer you can do the
18 deposition on instead, so you can have a bigger screen
19 to be able to see the documents I'm showing you?

20 A I do not have a computer available to me to do
21 this deposition.

22 Q Okay. All right. Do you have paper copies of
23 the interrogatory answers that we're showing you? Did
24 somebody, for example --

25 A I don't know. I could spend time looking for

1 it.

2 Q I'm sorry. What was that?

3 A I don't know. I don't know. I could time
4 looking for it if you wish.

5 Q Okay. I don't want you to spend time looking
6 for it. Let me tell you -- because you can't see it,
7 let me tell you what it says.

8 A I can see it. It's just very small.

9 Q Okay. Well, I'll try and make it bigger. The
10 problem is if you're looking at it on a phone, it's
11 going to be even smaller than what I'm looking at, which
12 is on a computer screen.

13 A Okay.

14 Q How about now? I made it bigger.

15 A Yeah. I can read it.

16 Q Okay. So it says you have general knowledge
17 regarding the JVA. Do you know what the JVA is, the
18 joint venture agreement that the parties entered into?

19 A Yes.

20 Q Yes.

21 THE OFFICER: Excuse me. Let's just be
22 careful of crosstalk and not speaking over each other,
23 please.

24 MR. ROTHMAN: Sorry about that,
25 Ms. McAlpin.

1 BY MR. ROTHMAN:

2 Q It says that you had daily and weekly
3 communications with Max regarding the performance of the
4 JVA. It says Max's -- you have knowledge of Max's
5 repeated failures to satisfactorily comply with Max's
6 obligations under the JVA and other related matters.

7 Such related matters include TEG's substantial
8 contributions to the development of the software at
9 issue in this case and TEG's co-ownership of that
10 software. Okay. So is it true that you have knowledge
11 of all of those things I've just read?

12 A Yes.

13 Q Okay. Then it says, "Mr. Mullican also has
14 knowledge of TEG's secure handling of software source
15 code and maintenance of the security and secrecy of any
16 trade secrets associated with the software at issue in
17 this case or its source code. Mr. Mullican also has
18 knowledge of TEG's compliance with the stipulation to
19 lift seal." Is it also true that you have knowledge of
20 those matters?

21 A Yes.

22 Q Okay. Great. There are other individuals who
23 are listed here in response to this that I want to ask
24 you about. So there's a [REDACTED].

25 Do you know who that is?

1 A Yes.

2 Q What does he do for TEG?

3 A [REDACTED]

4 [REDACTED]

5 Q Okay. But in general, what does he do? What
6 are his job duties? Does he write software code? Does
7 he do other things? What does he do?

8 A He does not report to me.

9 Q Doesn't report to you. Who does report to you
10 at TEG?

11 A [REDACTED]

12 Q Who's that?

13 A I need to confer with Counsel.

14 Q I'm sorry. You can't talk to counsel while
15 there's a question pending before an answer's been given
16 unless you need to talk to him about --

17 MR. DELANEY: So --

18 MR. ROTHMAN: Excuse me. Let me finish,
19 Mr. Delaney.

20 You know, unless you need to consult with
21 him about whether or not your answer is going to reveal
22 attorney-client privilege, and I just asked you a
23 factual question, so.

24 MR. DELANEY: So, I mean, you did ask him
25 a factual question, and the local rules allowed me to

1 confer with him to determine whether it really is about
2 privilege. I don't know the general issue, but if he
3 needs to speak with me, I will comply with my
4 obligations under the local rules. And, I mean, I think
5 we can do that quickly.

6 MR. ROTHMAN: Okay. Why don't we go off
7 the record, Ms. McAlpin, and tell us the time.

8 And why don't you two confer and come
9 back while we wait.

10 MR. DELANEY: Kevin, why don't you call
11 me right now?

12 THE OFFICER: Okay. We will -- we will
13 go off the record at 1:24 p.m.

14 (Off the record.)

15 THE OFFICER: We are back on the record
16 at 1:25 p.m.

17 BY MR. ROTHMAN:

18 Q Okay. Mr. Mullican, you were saying?

19 A Can you repeat the question, please?

20 Q The question was who is the lead developer
21 that reports to you?

22 A Right. [REDACTED]

23 Q [REDACTED] Is he the only person at TEG
24 that reports to you or do you have other reports?

25 A He's the only person that directly reports to

me.

Q Okay. Do any people indirectly report to you?

A He has several people that report to him.

Q

A

Q Okay. Do you know who reports to?

A I do not.

Q But he doesn't report to you?

A He does not report to me.

Q Okay.

A

Q Okay. You don't know an individual who works

for TEG

A Oh, I do.

Q Okay. So in the deposition testimony that

Mr. Clare gave, he indicated that

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BY MR. ROTHMAN:

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Q

Okay. So according to Mr. Clare,

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Yes.

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Q

Okay. And who is it that uses those

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computers?

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Q

Okay. Mr. Clare testified that the

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1 [REDACTED] Is that correct?

2 A Correct.

3 Q Okay. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A Yes.

7 Q Okay. [REDACTED]

8 [REDACTED]

9 A He does not.

10 Q Okay. Is the intention [REDACTED] [REDACTED] to
11 it?

12 A Yes.

13 Q Ms. Clare testified that there were
14 individuals who had [REDACTED]

15 [REDACTED] were the
16 person responsible for the administration of that source
17 code repository. Was that accurate?

18 A As the head of the technical department, the
19 responsibility ultimately falls -- falls to me.

20 Q Got it. Okay. Is there anyone else who works
21 with you who has responsibility for that repository?

22 A Yes.

23 Q Who else?

24 A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],

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to either

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of software -- excuse me --

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where is physically located?

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No.

1 Q Do you know where the company keeps, maintains
2 its physical servers?

3 A What company?

4 Q TEG.

5 A Yes. I know where TEG maintains physical
6 servers.

7 Q And where is that?

8 A Well, we don't have any physical servers that
9 are serving the software.

10 Q Okay. So these are -- the servers we're
11 talking about, these are virtual servers, not actual
12 physical hardware equipment that have those IP
13 addresses.

14 A [REDACTED].

15 Q [REDACTED]. Okay. Well, there
16 needs to be a computer, the physical computer somewhere;
17 right?

18 A Yes.

19 Q Okay. So my question is where is that
20 physical computer or where are the physical computers
21 that TEG uses for its business where it's running the
22 software we're talking about?

23 A [REDACTED] We
24 only have a [REDACTED].

25 Q Okay. So in other words, [REDACTED] owns and

1 maintains the hardware for those servers?

2 A Yes.

3 Q Okay. Do you develop software at all for TEG?

4 A Yes.

5 Q Okay. Tell me about what software you develop
6 currently and have developed in the past.

7 A I currently provide architectural design
8 guidance and occasional reviews of the VJOC software,
9 the current version of VJOC.

10 Q VJOC?

11 A Yes. I have -- I have in the past developed
12 VJOC services for TEG. I wrote the very first VJOC
13 version. I was involved in the second version. I was
14 involved with writing software to augment the third
15 version, and I wrote the first web instance of VJOC in
16 2017, as well as -- so that included a backend server,
17 and some video streaming components, and some virtual
18 desktop components.

19 Q Okay. You say you currently do architectural
20 design -- provide architectural design guidance and
21 reviews for VJOC. That's what you do now in terms of
22 your software development. Did I hear that correctly?

23 A Yes.

24 Q Okay. Can you explain to me what that means?
25 Can you describe, for example, what it is you do when

1 you do architectural design guidance or provide reviews
2 for VJOC? What is it you're doing?

3 A So architectural design is instructing the
4 engineers on how to assemble the components necessary to
5 provide the VJOC functionality, as well as what
6 components are necessary, and then how those components
7 interoperate with one another and are integrated into
8 the final platform.

9 Q Okay. And what is the reviews component of
10 the work that you do?

11 A So as part of the software development
12 process, when a software developer has a piece of code
13 that they wish to merge into the main line, it needs to
14 be reviewed by another developer. And if no other
15 developers are available, I can review it.

16 Q And when you say review it, are you actually
17 reading source code? Are you doing Q&A? Are you
18 running modules? What is it you're doing?

19 A I'm actually reviewing source code.

20 Q Okay. Now, the VJOC you're talking about, you
21 indicated that you have done development on this
22 software. Was this VJOC software developed entirely by
23 TEG or TEG developers?

24 A The first version of VJOC was developed by TEG
25 developers, and then the first instance of the fourth

1 version of VJOC was developed by TEG developers.

2 Q Is there a version number for the current
3 version of VJOC?

4 A Yes.

5 Q Do you know what that version number is?

6 A Three dot two.

7 Q And the first version, do you remember what
8 the first version number was?

9 A No.

10 Q Okay. Was it more or less than 1.0?

11 A I don't remember.

12 Q Okay. Do you know how many versions of VJOC
13 there've been since the first version through 3.2?

14 A I -- I'm not sure how to answer that question,
15 because it depends on what you call a version. So there
16 could be hundreds.

17 Q Okay. So if I wanted to see a list of all of
18 those versions, where would I go? What would I look at?

19 A You would look at a revision control system.

20 Q And what is the revision control system you're
21 referring to?

22 A The current revision control system that is
23 active is [REDACTED].

24 Q And would I look at [REDACTED]

25 A We don't use those anymore.

1 Q Okay. So when we were talking before about
2 how there was [REDACTED]
3 instance actually in use anymore or is it legacy in a
4 way?

5 A It is no longer in use.

6 Q No longer in use. Do you know when it ceased
7 to be used?

8 A Various components ceased to be used at
9 different times.

10 Q Do you know when the very last component
11 ceased to be used at GitHub?

12 A I do not. I'd have to go look.

13 Q Okay. Was it this year? Was it last year?
14 Can you help me at all with that?

15 A I -- I would be guessing.

16 Q Okay. So if you needed to look, where would
17 you look? Would you look at the [REDACTED] for that or
18 would you look at [REDACTED] picked up?

19 A No. I'd look at [REDACTED]

20 Q Okay. Why was the change made? I mean, it
21 sounds like there was a change made from [REDACTED]

22 [REDACTED] Is that true or did something else happen?

23 A Yes. We moved to [REDACTED].

24 Q And when did that occur?

25 A The middle of this year.

1 Q And why?

2 A Because it's more tightly integrated with the
3 rest of our deployment system.

4 Q Okay. Tell me what you mean by the rest of
5 your deployment system. What does that mean?

6 A That means the -- everything that happens
7 beyond writing, actual typing on a keyboard and writing
8 software, so.

9 Q Okay.

10 A Go ahead.

11 Q No. I'm trying to understand what that means.
12 I'm asking you, tell me what you mean by everything else
13 besides writing software. Explain that to me, please.

14 A So the actual software development, only a
15 very small part of it is a person's hands on the
16 keyboard. Everything -- everything else is -- is part
17 and parcel to the software development process, and we
18 are more tightly integrated through [REDACTED],
19 because it's more tightly integrated with [REDACTED] Even
20 though [REDACTED], it's not as tightly
21 integrated.

22 Q Does it make doing certain things easier or
23 faster?

24 A It -- yes.

25 Q Okay. Like what?

1 A Like building build artifacts, collecting
2 design artifacts, collecting issues and bugs, keeping
3 track of where we are in the process of the software
4 development, collecting feature requests. There's --
5 there's less handholding.

6 THE OFFICER: You said handholding?

7 THE WITNESS: Security is -- yes.
8 handholding.

9 THE OFFICER: Thank you.

10 THE WITNESS: Security is easier to
11 manage.

12 BY MR. ROTHMAN:

13 Q It sounds like this move happened this year in
14 2024.

15 A It did, I think. I'd have to go look and see
16 exactly, 'cause it would be related to that previous
17 question you had about [REDACTED] So again, without going
18 to look, I couldn't tell you exactly when it happened.

19 Q Okay.

20 THE OFFICER: Counsel, we're getting a
21 little crosstalk.

22 MR. ROTHMAN: Sorry about that
23 Ms. McAlpin.

24 BY MR. ROTHMAN:

25 Q So with respect to the move to [REDACTED] was

1 that a decision that you made?

2 A As the technical leadership of the
3 organization, the decision ultimately follows to me.

4 Q And so is that a yes, you made the decision to
5 move from [REDACTED]?

6 A Well, we don't really own -- operate a
7 draconian ship here, so it was a communal decision. We
8 decided through discussion with the rest of the
9 development team that it was the appropriate thing to
10 do.

11 Q Okay. Got it. So you're familiar with my
12 client, Mr. Fischer? You've met him before?

13 A Yes.

14 Q Okay. Do you remember when you first met him?

15 A First time I met him?

16 Q Mm-hmm.

17 A I don't remember the exact date.

18 Q Okay. Do you remember --

19 A It was when he was an -- it was -- was when
20 he -- it was when he was an employee at Prysm.

21 Q Okay. Do you remember any of the interactions
22 you had with him when he was an employee at Prysm?

23 A I do. Yes.

24 Q Well, tell me what you can recall.

25 A So we had a number of different discussions

1 around functionality with regards to Prysm. So Prysm
2 was providing us at the time version 3 of the VJOC
3 implementation or the third iteration, I guess we're
4 going to -- if we're going to start talking about
5 versions, you're going to get confused. So the third
6 implementation was Prysm.

7 And Mr. Fischer was, I believe, the chief
8 developer or something of that nature at -- at the
9 organization. So we had a number of discussions about
10 functionality that we wanted added into that platform,
11 and we had additional discussions about the approaches
12 that we were designing in-house.

13 So the -- the notion of a -- a web hosted VJOC
14 platform, which of course became iteration four, which
15 we were in the middle of writing when we were having
16 these discussions with Mr. Fischer. In fact, we showed
17 him several times some -- many of those pieces that we
18 were writing that were web hosted.

19 I can remember specifically Mr. Fischer saying
20 that he was going to be leaving Prysm, and he was going
21 to try and work with them to license their source code
22 to use to make another iteration of VJOC for us. And we
23 were strongly suggesting and were internally developing
24 a web hosted approach, and felt like the Prysm approach
25 was not the appropriate approach.

1 Q Okay. Did my client -- did Brandon ever say
2 that he actually had possession of the Prysm source
3 code?

4 A He said he was attempting to get access to the
5 Prysm source code, and of course he was the chief
6 developer. So I'm assuming if he was the developer, he
7 had access to it. Maybe that's the wrong assumption.

8 Q Okay. So was your understanding that my
9 client was the chief developer at Prysm and he had
10 access to the source code?

11 A Yes. And on many times he told us that.

12 Q Okay. So this may be a little bit difficult,
13 because you're doing this deposition on your phone, but
14 I'm going to mark a document as an exhibit. This hasn't
15 been produced in the case, but we will produce it with
16 Bates numbers afterwards. I'm going to mark it as
17 Exhibit 37.

18 (Exhibit 37 was marked for
19 identification.)

20 THE OFFICER: Counsel, did you want to
21 mark the notice from before or were you just showing it?
22 'Cause it was previously marked.

23 MR. ROTHMAN: I'm sorry. Was I going to
24 mark the what? I'm sorry.

25 THE OFFICER: The notice from before.

1 MR. ROTHMAN: The notice?

2 THE OFFICER: The exhibit that you showed
3 before. It was previously marked. I just want to --

4 MR. ROTHMAN: It was previously marked.

5 THE OFFICER: Okay. So you're okay.

6 MR. ROTHMAN: Yeah.

7 THE OFFICER: Thank you.

8 MR. ROTHMAN: Yeah. Thank you. Yeah.
9 No, that's fine.

10 BY MR. ROTHMAN:

11 Q Lost my place. Okay, 37. So I'm going to
12 start -- I'm going to share my screen. I'm going to let
13 you read the last email in the thread here. Okay? And
14 if you can please let me know when you're done reading
15 it, and then we'll move on, and I'll scroll down. But
16 the top thread in 37 is an email from my client,
17 Mr. Fischer, to you with a CC to Rob Clare and Sean
18 McCluskey. Do you see that?

19 A Yes.

20 Q Okay. Go ahead. Can you read that all right?
21 Is it big enough?

22 A Yes.

23 Q Okay. Well, once you read it, let me know
24 when you're done.

25 A I've read it.

1 Q Okay. So do you see how about in the middle
2 of the second paragraph it says, "I think the most
3 challenging aspects of this will be one, licensing the
4 source code from Prysm and two, getting the 'blessing'
5 for me to work with you guys." Do you see that?

6 A Yes.

7 Q Okay. Does that refresh your memory at all
8 about what my client had indicated in terms of whether
9 he actually had the source code, or could obtain the
10 source code, or would be able to get a license for the
11 source code?

12 A It doesn't change my understanding and
13 recollection.

14 Q Okay. So it's still your belief that my
15 client had access to the source code and was going to be
16 able to get a license to it as you had been discussing
17 with him?

18 MR. DELANEY: Objection to the
19 characterization.

20 MR. ROTHMAN: I'm just asking. He can
21 answer it any way he wants.

22 THE WITNESS: I didn't understand your
23 question.

24 BY MR. ROTHMAN:

25 Q Okay. Well, let's move on. If we can go

1 down, you indicated earlier in the thread here, April
2 20, 2018, "Brandon, I've attached the results of the
3 scan. At minimum we need to address the critical
4 findings. We're working on Prysm." Do you remember
5 what it was that you were working on Prysm? Is that
6 what you were just telling us before?

7 A That is what I was telling you before.
8 Iteration 3 of VJOC that we had deployed into the
9 government was Prysm. And so we were communicating with
10 Brandon about that regularly.

11 Q Okay. Now, there are iterations of VJOC
12 deployed into the government now; correct?

13 A There is a version of VJOC deployed into the
14 government.

15 Q Okay. And do you know what version that is?

16 A There are a couple of versions that are in the
17 government at the moment.

18 Q Okay. What are they?

19 A I would be speculating if I -- you wanted me
20 to talk about that exactly. I'm not responsible for
21 tracking which versions are in the government and where
22 they are.

23 Q Okay. Who is?

24 A I believe that's Jeff Mase.

25 Q Okay. What's his position?

1 A Jeff's position is chief operating officer of
2 TEG.

3 Q The VJOC that are in the government now, are
4 those -- is that software that was created at least in
5 part using my client's source code?

6 A No. It was created using the source code that
7 we co-owned and co-created.

8 Q Okay. So you're referring to the source code
9 that you're saying co-owned and co-created. You're
10 referring to the joint venture agreement between Max and
11 TEG?

12 A No. I was referring to the source code.

13 Q Okay. When you say co-owned and co-created,
14 you're using those terms because there was this joint
15 venture agreement between Max and TEG; right?

16 A And several years course of conduct in
17 co-owning and co-developing software.

18 Q Okay. So there are a number of documents that
19 are at issue in this case concerning the relationships
20 of the parties. There is that joint venture agreement.
21 You're familiar with that agreement? You've read it
22 before?

23 A Yes -- yes.

24 Q Okay. There's also a document called a source
25 code license agreement. You're familiar with that;

1 right?

2 A No. I'm not familiar with that one. I know
3 that it exists, but I've not read it, and I'm not aware
4 of it.

5 Q Okay. Are you familiar with an end user
6 license agreement?

7 A I'm familiar that the software has an end user
8 license agreement that the government customer, as the
9 end user, does accept.

10 Q Okay. How many end user government customers
11 have accepted the end user license agreement to your
12 knowledge?

13 A That's not something I'm aware of.

14 Q Do you know who is?

15 A Rob, probably.

16 Q Mr. Clare?

17 A Mr. Clare.

18 Q Would Mr. Mase know?

19 A I can't speculate as to what Mr. Mase knows or
20 doesn't know.

21 Q Okay. All right. Were you -- withdrawn. Are
22 you familiar with a joint development agreement entered
23 into between Max, my client, and TEG?

24 A Something beyond the joint venture agreement?

25 Q Right. Are you familiar with a document

1 called Joint Development Agreement?

2 A No.

3 Q Have you ever -- no. Do you know if such an
4 agreement exists?

5 A I know of the joint venture agreement.

6 Q Got it. Okay. Understood. So back to your
7 interactions with my client we saw on the email there in
8 2018, do you remember the next time that you had any
9 interactions with my client after he left Prysm?

10 A We had a number of informal telephonic
11 conversations over that period of time. I couldn't tell
12 you exactly when they were, but they were -- they were
13 with regards to the architecture that we had begun
14 working on before we had done anything with Mr. Fischer.

15 And then the continued direction where we
16 wanted to go with regards to our government customer,
17 that is we needed a web hosted solution, and we were in
18 the middle of developing our own.

19 Q Okay. And what year was that when you say you
20 were in the middle of developing your own?

21 A Well, we started development on that in 2017.

22 Q Right. But we were beyond --

23 A And we're --

24 Q Go ahead. I'm sorry.

25 A We were continuing to develop it through two

1 2018.

2 Q Okay. And then what happened after 2018?

3 A We were no longer able to keep on staff, the
4 developers who were working on it.

5 Q Why?

6 A Didn't have the money to do so.

7 Q Oh. Do you remember who those developers
8 were?

9 A Yes.

10 Q Who were they? What were their names?

11 A They're no longer with the organization.

12 Q I know, but do you remember their names?

13 A I do, yeah.

14 Q Can you tell me them?

15 A I should confer with Counsel again.

16 MR. ROTHMAN: Okay. What time is it?
17 Let's go off the record, Ms. McAlpin.

18 THE OFFICER: Okay. We will go off the
19 record at 2:03 p.m.

20 (Off the record.)

21 THE OFFICER: Okay. We are back on the
22 record at 2:04 p.m.

23 MR. ROTHMAN: Okay. Can you read back
24 the last question, please?

25 THE OFFICER: Yes. Stand by.

1 (The officer repeated the record as
2 requested.)

3 MR. ROTHMAN: Referring to the names of
4 the developers who no longer work at TEG. Go ahead.

5 THE WITNESS: Correct. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 BY MR. ROTHMAN:

11 Q Okay. [REDACTED]

[REDACTED]
[REDACTED]

14 THE OFFICER: Can you -- I'm so sorry.
15 We had just a technical issue. Mr. Mullican, can you
16 just repeat your statement for me? Sorry about that.

17 THE WITNESS: [REDACTED]

[REDACTED]
[REDACTED]

20 BY MR. ROTHMAN:

21 Q [REDACTED]

22 Something like that?

23 A I'm not -- I don't remember the spelling. I'm
24 sorry.

25 Q That's all right. Okay. Let me show you --

1 oh, this is going to be really difficult for you to see
2 on a phone.

3 A Put it up. I'll tell you how it looks.

4 Q Okay. Let's try. Okay. So I'm going to show
5 you what was previously marked as Exhibit 34. Okay. So
6 this is a list that was shown to Mr. Clare at his
7 deposition of employees that we compiled, employees of
8 TEG.

9 So I just wanted to see if you could review
10 this list, see if you could remember the name of the
11 third employee whose name you couldn't remember a moment
12 ago. And I'll scroll down.

13 A Okay. So I can see it.

14 THE OFFICER: Sorry, Counsel. Not to
15 interrupt, but if you press this plus button, it can at
16 least make the font larger.

17 THE WITNESS: I can read it.

18 MR. ROTHMAN: Yeah. I'm making it bigger
19 to the extent I can, but thank you.

20 I'm just going to scroll down. The next
21 page has former employees on it.

22 THE WITNESS: Yeah. I'm sorry.
23 You're -- just going too fast for me, and I'm losing my
24 way.

25 //

1 BY MR. ROTHMAN:

2 Q Oh, sorry. So the former employees begin at
3 the bottom of the first page. I'm going to highlight,
4 [REDACTED]. And then
5 the alphabet begins again with [REDACTED]
6 [REDACTED]

7 And then if we scroll down to the next page,
8 here are more people. On the next page there is a [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A Yeah.

19 Q Okay. Great. All right. Anyone else while
20 you're looking at this list that refreshes your memory
21 as someone who had worked on software development?

22 A There are people on here that provided
23 software development support, but they weren't hands on
24 keyboard typing in code.

25 Q Okay. And who are the people who provided

1 software development support?

2 A [REDACTED]

3 Q Okay. Anyone else?

4 A Hold on. I'm looking at your list.

5 Q Sure.

6 A [REDACTED]

7 [REDACTED]

8 Q Okay. Yes. He's got a lead developer name.
9 It indicates he left TEG June of 2024. Is that correct
10 or is that later than you remember?

11 A I would be speculating.

12 Q Okay. Got it. Okay. So great. Thank you
13 for taking a look at that. So did there come a time
14 that TEG obtained my client's source code and began to
15 make modifications to it?

16 MR. DELANEY: Objection to the form.

17 MR. ROTHMAN: You can answer, sir.

18 THE WITNESS: TEG never worked on any of
19 your client source code. It was all co-created and
20 co-owned. So we continued -- we worked on our
21 co-created and code -- own source code.

22 BY MR. ROTHMAN:

23 Q Okay. So at some point, TEG obtained source
24 code from my client; correct?

25 A At many points TEG obtained source code from

1 your client given to us by your client.

2 Q Right. The purpose for giving the source code
3 to TEG was in order so that certain software could be
4 run on it to determine if there were any security
5 vulnerabilities; correct?

6 MR. DELANEY: Objection.

7 THE OFFICER: Counsel, what was the
8 objection?

9 MR. ROTHMAN: I think he's objecting to
10 form; correct?

11 MR. DELANEY: Well, it assumes facts not
12 in evidence. Mischaracterizes the evidence and the
13 testimony. Form of the question.

14 MR. ROTHMAN: Mr. Mullican, you can
15 answer the question.

16 THE WITNESS: Counsel, can I answer the
17 question?

18 MR. DELANEY: If you understand the
19 question, then you can answer it.

20 THE WITNESS: Please repeat the question.

21 BY MR. ROTHMAN:

22 Q Okay. Let me show you a document that was
23 marked at Mr. Mase's deposition. It's Exhibit 35. So
24 do you see Exhibit 35 on your screen there?

25 A Yes.

1 Q Okay. It's entitled, "Evidence/Property
2 Custody Document." Do you see that?

3 A Yes.

4 Q And it indicates under reason obtained, source
5 code scanning and time date obtained 12:00 hours August
6 18, 2023. Do you see that?

7 A I do.

8 Q Okay. Do you understand what the reason
9 obtained source code scanning, what that means?

10 A In regards to this one transaction and that
11 one version, yes.

12 Q Okay. Tell me what it means.

13 A It means that we will take the source code and
14 ensure that there are no vulnerabilities in it, because
15 vulnerabilities aren't allowed in the government.

16 Q Okay. Understood. And this document
17 indicates that it was -- the source code at issue was
18 haptic federal source code 3.1.21.7; correct?

19 A That does say that number.

20 Q Okay. And the source code was received from
21 my client via download link from Jennifer Ryan; right?

22 A Yes.

23 Q Okay. So do I understand correctly that TEG
24 received the haptic federal source code version 3.1.21.7
25 via download link from Jennifer Ryan of Max Minds, and

1 then did source code scanning on it in or about August
2 18 of 2023?

3 A I'm not involved in that process.

4 Q Okay. Do you know that TEG did source code
5 scanning of my client's haptic federal source code?

6 A Yes. TEG did do source code scanning.

7 Q Okay. So it indicates, if we scroll down to
8 the bottom, that the change of custody purpose initially
9 was Max Minds sent item number 1, which was the source
10 code, to TEG to scan the haptic federal source code. Do
11 you see that?

12 A I see what this document says.

13 Q Okay. And then it's signed by Mike Bauers
14 [ph] of TEG, "TEG certifies destruction of item one,
15 haptic federal source code version 3.1.21.7." Do you
16 see that?

17 A I do.

18 Q Okay. Do you know whether TEG retained a copy
19 of that source code rather than destroy it or not
20 destroy it as indicated? Do you know?

21 A I do not.

22 Q Okay. Did you see when you read Mr. Clare's
23 deposition testimony that he indicated that TEG kept the
24 source code rather than destroy it?

25 A I didn't see that part.

1 Q You didn't? Okay. Are you aware whether TEG
2 kept my client's source code rather than destroy it?

3 A Well, TEG didn't keep your client's source
4 code. TEG has access to the source code that we've
5 co-created and co-developed.

6 Q Right. Now, putting aside the issue --

7 A On multiple -- multiple -- sorry. Go ahead.

8 Q Mr. Mullican, putting aside the issue of the
9 interpretation of the joint venture agreement or the
10 rights of TEG under that agreement, I'm asking you a
11 factual question. And the factual question is did TEG
12 to your knowledge ever receive source code from my
13 client and retain that source code rather than destroy
14 it as it certified to my client it was doing?

15 MR. DELANEY: Objection. You're
16 referring to this particular version or are you
17 referring to other versions? And that's the source of
18 the confusion, I think.

19 MR. ROTHMAN: Okay. Did TEG --

20 MR. DELANEY: If he understands your
21 question, he can answer it.

22 MR. ROTHMAN: So, Mr. Delaney, please
23 don't coach the witness.

24 MR. DELANEY: I'm not coaching the
25 witness. I'm objecting to your question.

1 MR. ROTHMAN: I understand, Mr. Delaney.

2 Let me ask the witness another question.

3 BY MR. ROTHMAN:

4 Q Mr. Mullican, did TEG ever receive source code
5 at any time from my client that it was supposed to
6 destroy, but instead of destroying it, retained?

7 A I don't know about ones we were supposed to
8 destroy, or retain, or what have you. It's -- it's our
9 common owned source code. So it's not your client's
10 source code.

11 Q Okay. Are you aware of any legal opinion that
12 TEG has received that indicates that what you just said,
13 that it's your common owned source code and so you could
14 retain it instead of destroy it? Are you aware --

15 MR. DELANEY: So --

16 MR. ROTHMAN: Excuse me.

17 BY MR. ROTHMAN:

18 Q The question is are you aware of such an
19 opinion?

20 MR. DELANEY: All right. I'll need to
21 confer with him about a question of privilege before he
22 answers.

23 MR. ROTHMAN: Okay. Go ahead.

24 Let's go off the record. What's the
25 time, Ms. McAlpin?

1 THE OFFICER: Okay. We will go off the
2 record at 2:19 p.m.

3 (Off the record.)

4 THE OFFICER: Okay. We are back on the
5 record at 2:27 p.m.

6 MR. ROTHMAN: Okay. You can read that
7 question back, please.

8 THE OFFICER: Okay. Just one moment.
9 Stand by.

10 (The officer repeated the record as
11 requested.)

12 THE OFFICER: Okay.

13 MR. DELANEY: And if you could, answer
14 that precise question.

15 THE WITNESS: Am I aware of such an
16 opinion? I don't know. I don't -- I don't think I
17 understand the question.

18 BY MR. ROTHMAN:

19 Q Okay. Have you ever seen a document called a
20 legal opinion relating to whether or not TEG is an owner
21 of the source code we've been discussing?

22 MR. DELANEY: All right. I'm going to
23 have to confer with him, because we do have -- we will
24 have an objection if he knows anything about it, but I
25 want to make sure that you get the answer as to whether

1 he knows about it.

2 So I guess we could just say, look, I
3 guess the -- it's a yes or no. Do you know or do you
4 not know? And I'm okay with that.

5 MR. ROTHMAN: Right. And all I want to
6 know is if he's ever seen such an opinion. That's it.

7 MR. DELANEY: I just don't want him to
8 start explaining whatever it is if -- I'm happy with a
9 yes or no, so.

10 MR. ROTHMAN: That's fine.

11 THE OFFICER: I'm sorry, Counsel. What
12 was the very last thing you said, Mr. Delaney?

13 MR. DELANEY: I'm happy for him to say
14 yes or no whether or not he has seen it, but I am going
15 to -- I would object to him saying anything other than
16 that at this time, so.

17 THE WITNESS: I'm not sure how to answer
18 that question. I would say I don't know. I don't -- I
19 don't know.

20 BY MR. ROTHMAN:

21 Q Okay. Fine. Let's move on. All right. Do
22 you recall when it was that TEG first obtained my
23 client's source code?

24 MR. DELANEY: Objection.

25 MR. ROTHMAN: You can answer,

1 Mr. Mullican.

2 THE WITNESS: No.

3 BY MR. ROTHMAN:

4 Q Okay. Mr. Clare testified it was in or about
5 August or September of 2023. Does that refresh your
6 memory?

7 A No.

8 MR. DELANEY: Objection.

9 BY MR. ROTHMAN:

10 Q Okay. It's my understanding from Mr. Clare's
11 testimony that TEG began to make modifications to my
12 client's source code. Do you know why it did that?

13 MR. DELANEY: Objection.

14 MR. ROTHMAN: You can answer,
15 Mr. Mullican.

16 THE WITNESS: Your client, Max Minds, was
17 not providing functional software.

18 BY MR. ROTHMAN:

19 Q Okay. So TEG began to make modifications to
20 it in order to make it functional? Mr. Mullican?

21 THE OFFICER: Did you answer?

22 THE WITNESS: Oh, I didn't hear a
23 question. That was a statement.

24 MR. ROTHMAN: It was a question.

25 THE WITNESS: Okay. Please ask the

1 question again.

2 MR. ROTHMAN: Read it back, Ms. McAlpin.

3 THE OFFICER: Yes. Please stand by.

4 (The officer repeated the record as
5 requested.)

6 THE OFFICER: You may answer.

7 THE WITNESS: TEG made modifications to
8 our code -- software in order to make it functional and
9 to cure the deficiencies that Max Minds had -- Max
10 Minds' team had been able to -- unable to care for
11 multiple years.

12 BY MR. ROTHMAN:

13 Q Okay. And what were those deficiencies?

14 A I can give you a short list, because I
15 remember them very well.

16 Q Sure.

17 A The users were being automatically removed.
18 Government doesn't like that. Multiple scan failures
19 with critical failures. A bug we called the Dumpster
20 Blender where everything in the system would randomly
21 show up on the screen. A bug we called the Ghostpatch
22 where the screen would become completely unresponsive.

23 A Notepad bug where data that's entered into
24 the shared Notepad is lost unrecoverably. An adjustment
25 of video bit rate to unusable levels. The -- there are

1 a bunch of license issues with regards to reporting of
2 the license inside the application.

3 The general app crashing login spinner that
4 required us to have an engineer literally sitting in
5 front of the software to restart it every ten minutes.
6 We were looking for some additional logging that was
7 never delivered that kept us from being able to install
8 on a network that we were required to. Gosh. And these
9 problems would be fixed and then reappear. And this
10 happened over many years.

11 Q Were you just reading off of something to give
12 me that information?

13 A I have notes in a notebook. Yes.

14 Q Okay. I know, but were you just -- it looked
15 like you were looking to your right and you were reading
16 something.

17 A Oh, I was recalling what they were.

18 Q Okay. And the notes in your notebook, are
19 those notes you've been taking during the deposition?

20 A They are, yes.

21 Q Okay. How many pages of notes have you taken?

22 A About a half a page.

23 Q I'm just going to ask you to maintain those
24 notes. Don't destroy them after the deposition, please.

25 Okay?

1 A Of course.

2 Q Great. Thank you. So what I got from you was
3 users being removed, multiple scan failures, the
4 Dumpster Blender problem, something called a Ghostpatch,
5 a Notepad bug, an adjustment to the video bit rate,
6 license issues regarding reporting of licenses, the apps
7 crashing, additional login problems. Did I miss
8 anything?

9 A You forgot the login spinner.

10 Q Login spinner. Okay. What else?

11 A I think that's all the major problems.

12 Q Were there any minor problems that I didn't
13 list that you want to tell me about?

14 A Way too numerous to mention.

15 Q Okay. Too numerous. Are they written down
16 anywhere to your knowledge?

17 A I hope so.

18 Q Where would I look for them?

19 A I don't maintain that piece.

20 Q Okay. But what piece is it? Where would I
21 need to look? Whoever maintains it, where would I be
22 looking for it?

23 A Well, I'm not sure where that would be. We
24 had several bug trackers that we were using. We
25 maintained spreadsheets that we shared with Max Minds

1 with regards to the issues. Max Minds destroyed one of
2 our bug trackers. We have not been able to get -- get
3 to that.

4 Q What was that bug tracker you're talking
5 about?

6 A I think that one was called [REDACTED]

7 Q And why do you say Max Minds destroyed it?

8 A Well, we had been logging bugs in a bug
9 tracking system, and Max Minds changed bug tracking
10 systems, and failed to transfer the old bugs that we had
11 entered in this old system into the new system. And
12 then they claimed that they were not able to, but the
13 company who maintains that system said they were all
14 recoverable.

15 Q So who was it that -- did someone at TEG speak
16 to someone at Happyfox about that?

17 A Yes.

18 Q Who was that spoke to Happyfox?

19 A Jeff Mase.

20 Q Okay. Were you involved in those
21 conversations at all?

22 A No.

23 Q Have you seen the recovered bugs?

24 A No.

25 Q Did Jeff Mase get them back? No? Okay.

1 A I've not seen -- I've not seen them, and I
2 don't know whether he got them back.

3 Q Okay. What is -- describe to me what the
4 license issues were regarding the reporting of licenses.

5 A The license issues regarding the reporting of
6 licenses, there was an ongoing disagreement between Max
7 Minds and TEG with regards to the functionality of the
8 licensing.

9 Q Okay. What does that mean? What do you mean
10 functionality of the licensing?

11 A So the software was originally unlicensed.
12 The government required us to add a licensing scheme to
13 it. We asked Max Minds to add a licensing scheme to it
14 and defined precisely what we wanted. Max Minds
15 implemented a version of that licensing scheme, but not
16 to our specifications, and then never implemented it
17 according to our specifications.

18 Q Okay. And it's my understanding that the
19 licensing scheme requires a license key to install. Is
20 that your understanding?

21 A That's what we asked them to implement. Yes.

22 Q No. But I'm asking you wasn't that what was
23 implemented? Wasn't that how -- in order to install the
24 software that you needed a license key?

25 A Correct. That's what we requested to be

1 implemented. However, the method through which it was
2 implemented was not to our specifications.

3 Q Understood. But some method by which a
4 license key would be required was implemented?

5 A Correct.

6 Q Okay. Which meant that you needed a license
7 key in order to install the software; right?

8 A Yes.

9 Q Okay. My understanding is that the software
10 has been installed since then, but since my client was
11 the source of the licensing keys, how could that have
12 occurred? How could the software have been installed
13 without license keys?

14 A Your client included in the source code the
15 private key necessary to generate the license keys,
16 which was an incredible security hole that we
17 immediately had to patch when we found out.

18 Q Okay. So you were able to get from the source
19 code the master key, so that you could then install the
20 software without the licensing keys?

21 A Well, no. We had to generate licenses.

22 Q Okay. But you got the master keys, so that
23 you could generate the license keys from that?

24 A Your client included it in the source code
25 that they handed over to us.

1 Q And I understand that. And so you got the
2 master key from the source code, and then you used it to
3 generate license keys?

4 A We -- no.

5 Q No?

6 A Because we can't use a master -- we can't
7 include a key in source code we turn over to the
8 government. The very first thing we did when we began
9 to make modifications to our software was to remove that
10 security deficiency.

11 Q Okay. So then you created and implemented a
12 different key or --

13 A Yes.

14 Q -- some other different licensing scheme?

15 A Yes.

16 Q And what was that?

17 A It was a secure licensing scheme that did not
18 include the master key and the source code.

19 Q Can you describe it any more specifically for
20 me?

21 A No.

22 Q Why not?

23 A Because it's a technical implementation. I --
24 I mean, I -- I don't know. I mean, I don't know your
25 level of technical ability, so I'm not sure what I

should describe to you.

Q Okay. Well, Mr. Mullican, let me tell you that for two years I ran a software company, and the software company was an internet security software company. I've developed software in the past. I could go on and on about it. Why don't you go ahead and give a try?

A

A

Q [REDACTED] Okay. Got it. Thank you. Now, did you become aware towards the beginning of this litigation that TEG's web servers were publicly exposing front end source code?

A No, but allow me to explain.

Q Please.

A We were hosting services, and those services were publicly available. And when we became aware of it, we put them behind a private gateway.

Q Okay. But as publicly available as TEG had

1 configured and hosted them, they were exposing front end
2 source code; correct?

3 A That -- yes, as any -- as any web hosted
4 service would.

5 Q Okay. Well, isn't -- so let me show you what
6 we'll mark as --

7 THE OFFICER: The last one was 37,
8 Counsel.

9 MR. ROTHMAN: Thank you very much.

10 BY MR. ROTHMAN:

11 Q We'll mark it as Exhibit 38.

12 (Exhibit 38 was marked for
13 identification.)

14 Take a look at Exhibit 38 for a moment. And
15 I'll scroll down so you can see the rest of it. Okay?

16 A Okay.

17 Q Actually, you know what? I think I marked the
18 wrong thing. Let me -- sorry about that. I thought I
19 had the right one here. Thirty-eight. Where was that?
20 Sorry about that. All these [REDACTED] notes kind of blend
21 together. No, that's not it. I thought this was a
22 exhibit from the prior deposition. No. Oh, maybe it's
23 this one.

24 Okay. Are you familiar with the fact that
25 when this discovery of there being front end source code

1 was made, that there were release notes exposed as part
2 of that code, Mr. Mullican?

3 A No.

4 Q Okay. You never had any conversation with
5 anyone about release notes being exposed? You don't --
6 that doesn't ring a bell to you?

7 A No.

8 Q Okay. So then I'm not going to show this to
9 you. Let me see if I can find that one then. Page 104.
10 Okay. I think I know what you're talking about then.
11 Let's find this. Okay. Let me show you Exhibit 32.
12 Okay. This is a 121-page exhibit, but I'm going to go
13 down to page 104 of the exhibit, which is Bates number
14 TEG 1656.

15 So this looks a little like the other one, but
16 it's different. Okay. So this is an [REDACTED]

[REDACTED]

[REDACTED]

19 A [REDACTED].

20 Q Right. Okay. And it's dated 5/10/24. And
21 the subject is, "[REDACTED]

[REDACTED] Do you see that?

23 A Yes.

24 Q Do you know what that means, user story?

25 A I know what a user story is.

1 Q Tell me what a user story is.

2 A It's an assignment to a developer.

3 Q Got it. [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] Now, do you recall if
6 this has anything to do with the source code maps
7 exposing the front end source code online?

8 A No.

9 Q Okay. Do you know what it does have to do
10 with?

11 A There's not enough information here for me to
12 answer that intelligently.

13 Q Okay. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 A I can read what that says, and I understand
19 what it says.

20 Q Okay. But it's not enough information for you
21 to understand what this was about?

22 A No. I'm lacking content -- context.

23 Q Okay. What context would you need?

24 A I'd have to see where in the development cycle
25 it was, what user story it was, what -- what it fell

1 under, what -- you know, what feature it was assigned
2 to, what Epic [ph] it was assigned to, and in what order
3 were things done. I mean, there's just an enormous
4 amount of development process context that would be
5 necessary in order to -- for me to answer what you are
6 asking.

7 Q Okay. So we'd need to dig in and take a look
8 at the user stories and the development that had
9 proceeded that user story to know?

10 A Yes. And the discussions about that, and the
11 Epics [ph] that it falls under, and the prioritization
12 based on prioritization of other topics. There's a lot
13 of things that would have to be dug into for me to
14 understand what you're asking.

15 Q Okay. And the conversations -- when
16 developers at TEG have those conversations, do they have
17 them by email?

18 A No.

19 Q How did they have them? How did they have
20 those conversations? By telephone?

21 A Usually by telephone.

22 Q Okay. Do they ever have them any other way?
23 Microsoft Teams chat, or Slack, or text message, or
24 anything else like that?

25 A Usually they're as in person as we can be for

1 a remote team.

2 Q Okay. So we talked about six people having
3 access to the -- well, actually seven people if we
4 include [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

8 A No.

9 Q Okay. So where -- so are all these people
10 physically in the same place so that they can all have
11 conversations with each other face-to-face?

12 A No.

13 Q Are any of them in the same place?

14 A Of the seven you mentioned, no.

15 Q Okay. [REDACTED]ph] ever do
16 software development?

17 A No.

18 Q Has TEG ever used outside contract software
19 developers who are not employees of TEG?

20 A Max Minds.

21 Q Besides Max Minds. And I mean either
22 independent contractors to TEG. Not separate companies.

23 A No. Except for Max Minds.

24 Q Okay. Are you -- have you ever been involved
25 in demonstrations of TEG software in the past two years?

1 A No.

2 Q [REDACTED]

3 [REDACTED]

4 A No.

5 Q Does TEG have its software running at its own
6 location?

7 A No. [REDACTED]

8 [REDACTED]

9 MR. ROTHMAN: [REDACTED].
10 That's right. You did say that.

11 Okay. I'm going to ask my client to
12 leave. I've got just a few more questions about some
13 documents that are marked attorneys' eyes only if we
14 can -- he's gone. Okay.

15 So this portion where we're looking at
16 AEO documents, if you can mark that, Madame Court
17 Reporter, as attorneys' eyes only.

18 I want to show you a document.

19 Help me out again, Madame Reporter. What
20 number am I up to now?

21 THE OFFICER: The last one was 38.

22 MR. ROTHMAN: Got it. Okay. So --

23 THE OFFICER: You did mention that you
24 didn't want to mark it, but it is marked, so I don't
25 know if you want to delete that, but the last one was --

1 MR. ROTHMAN: Oh, no. It's fine. I
2 don't have an issue with it. It's perfectly fine.

3 THE OFFICER: Okay. So you would be on
4 39.

5 MR. ROTHMAN: Yeah. I got nothing to
6 hide. So --

7 MR. DELANEY: So it's a new 39?

8 MR. ROTHMAN: Yeah. I'm going to do 39
9 now.

10 (Exhibit 39 was marked for
11 identification.)

12 (Nonconfidential portion of transcript
13 ends.)

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1 (Nonconfidential portion of transcript
2 begins.)

3 THE OFFICER: Okay. We are back on the
4 record at 3:06 p.m.

5 MR. DELANEY: Yes. This is Raighne
6 Delaney. I don't have any questions, and Mr. Mullican
7 will read.

8 THE OFFICER: Okay. And the original
9 will go to Mr. Mullican or to -- to your office,
10 Mr. Delaney?

11 MR. DELANEY: You can send it --

12 MR. ROTHMAN: We're not going to -- we're
13 not in a court where the original really matters a ton,
14 it's my understanding, Ms. McAlpin. And we're going to
15 order, so -- and I need it --

16 MR. DELANEY: We'll just do
17 electronically. Yeah.

18 MR. ROTHMAN: Yeah. Electronically is
19 fine for now. And I do need it -- could I have it by
20 Thursday?

21 THE OFFICER: Let me have Veritext get in
22 touch with you.

23 And just to clarify, Mr. Delaney is
24 ordering a copy?

25 MR. DELANEY: Yeah. I believe we are.

1 MR. ROTHMAN: Yeah.

2 THE OFFICER: Okay. Just making sure.

3 MR. DELANEY: Yeah. I will need the
4 exhibits, as well as the transcript.

5 MR. ROTHMAN: Yes. We're going to send
6 those out and to you, Ms. McAlpin. Do I have your email
7 address?

8 And, Campbell, please write it down,
9 because I'm going to need your help with this.

10 THE OFFICER: Yes. I can put that in the
11 chat for you, Counsel.

12 MR. ROTHMAN: Please. Thank you.

13 THE OFFICER: Okay. I think that's going
14 to be everything. Was there anything else before we go
15 off the record?

16 MR. DELANEY: No. I think we're good.

17 MR. ROTHMAN: No.

18 THE OFFICER: Okay. Great. We will go
19 off the record at 3:07 p.m.

20 (Signature reserved.)

21 (Whereupon, at 3:07 p.m., the proceeding
22 was concluded.)

23

24

25

CERTIFICATE OF DEPOSITION OFFICER

I, VALENCI MCALPIN, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



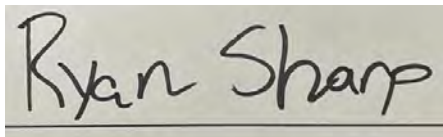
VALENCI MCALPIN

Notary Public in and for the
State of California

☒ Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, RYAN SHARP, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in black ink that reads "Ryan Sharp". The signature is written in a cursive, slightly slanted style. It is positioned above a thin horizontal line.

RYAN SHARP

1 RAIGHNE COLEMAN DELANEY, ESQUIRE

2 rdelaney@beankinney.com

3 November 21, 2024

4 RE: Max Minds, LLC v. Triangle Experience Group, Inc.

11/19/2024, Kevin Mullican (#7028327)

5
6 The above-referenced transcript is available for
7 review.

8 Kevin Mullican should read the testimony to
9 verify its accuracy. If there are any changes,
10 Kevin Mullican should note those with the reason
11 on the attached Errata Sheet.

12 Kevin Mullican should, please, date and sign the
13 Errata Sheet and email to the deposing attorney as well as
14 to Veritext at Transcripts-fl@veritext.com and copies will
15 be emailed to all ordering parties.

16 It is suggested that the completed errata be returned 30
17 days from receipt of testimony, as considered reasonable
18 under Federal rules*, however, there is no Florida statute
19 to this regard.

20 If the witness fails to do so, the transcript may be used
21 as if signed.

22 Yours,

23 Veritext Legal Solutions
24

*Federal Civil Procedure Rule 30(e)/Florida Civil Procedure
25 Rule 1.310(e).

1 Max Minds, LLC v. Triangle Experience Group, Inc.

2 11/19/2024, Kevin Mullican (#7028327)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

8 _____

9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

11 _____

12 REASON_____

13 PAGE_____ LINE_____ CHANGE_____

14 _____

15 REASON_____

16 PAGE_____ LINE_____ CHANGE_____

17 _____

18 REASON_____

19
20 Under penalties of perjury, I declare that I have
21 read the foregoing document and that the facts
22 stated in it are true.
23

24 (Kevin Mullican)

25 DATE

[& - adjustment]

Page 79

&	2023 45:6 46:2	39 4:13 66:4,7,8	absent 5:14
& 2:20	51:5	66:10	accept 37:9
0	2024 1:15 5:9	3:06 73:4	accepted 37:11
00779 1:7	10:24 29:14	3:07 74:19,21	access 19:21,24
1	43:9 65:3 77:3	4	20:25 21:7,10
1 46:9	2033 61:21	404-4335 2:14	21:14 22:2,5,7
1-10 1:10	21 77:3	5	32:4,7,10 34:15
1.0 26:10	21301 2:5,11	5 14:6	47:4 64:3,4
1.310 77:25	22201 2:22	5/10/24 61:20	accuracy 77:9
10.0.0.4 22:16	2311 2:21	500 2:21	accurate 12:24
10.0.0.6 22:16	233 62:3	525-4000 2:24	21:17 75:9 76:5
10.0.0.7. 22:16	28660 76:18	561 2:14	acknowledge...
100 2:5,11	2:03 39:19	6	5:11
104 61:9,13	2:04 39:22	6 4:3	action 75:11,15
11/19/2024 77:4	2:19 49:2	60 4:12	76:8,12
78:2	2:27 49:5	600-5599 2:8	active 26:23
121 61:12	3	66 4:13	actual 23:11
12:00 45:5	3 31:2 35:8	67-72 1:22	28:7,14
1656 61:14	3.1.21.7 45:18	7	actually 25:16
18 45:6 46:2	45:24	7028327 1:20	25:19 27:3 32:2
19 1:15 5:8	3.1.21.7. 46:15	77:4 78:2	34:9 60:17 64:3
1:06 1:16 5:5	3.2 26:13	703 2:24	add 56:12,13
1:24 1:7 18:13	30 10:24 11:25	9	added 22:6
1:25 18:16	77:16,24	90013 1:18 5:9	31:10
2	30251 75:20	a	additional
2 14:4	32 4:10 61:11	ability 58:25	31:11 53:6 54:7
20 35:2	332 2:8	75:10 76:6	additionally
2014 7:6 8:15,24	33433 2:6,12	able 14:19 34:10	5:14
2017 8:18,25 9:8	34 41:5	34:16 39:3	address 35:3
9:14 24:16	35 44:23,24	52:10 53:7 55:2	74:7
38:21	37 4:7 32:17,18	55:12 57:18	addresses 22:13
2018 35:2 38:8	33:11,16 60:7	above 77:6	22:14,18,20
39:1,2	38 4:11 60:11,12		23:13
	60:14 65:21		adjustment
			52:24 54:5

[administer - begins]

Page 80

administer 5:11	44:15,16,19	asked 17:22	available 14:20
administration	47:21 49:13,25	22:11 56:13,21	25:15 59:23,25
21:16	50:17,25 51:14	asking 28:12	77:6
administratively	51:21 52:6	34:20 47:10	aware 20:22
22:3,4	62:12 63:5	56:22 63:6,14	37:3,13 47:1
aeo 65:16	answer's 17:15	asks 14:4	48:11,14,18
afternoon 5:2	answers 12:2,9	aspects 34:3	49:15 59:17,23
6:23,24	12:12,22 13:2,4	assemble 25:4	azure 22:9,21
ago 13:20,21	13:19 14:2,23	assigned 5:4	22:21,23 23:14
41:12	22:13,14 48:22	62:4 63:1,2	23:15,23 26:23
agree 5:12,16	anymore 26:25	assignment 62:2	27:23 28:18,19
agreement	27:3	62:4	59:15,16 60:20
15:18 36:10,15	app 53:3	associated	61:16 65:7,9
36:20,21,25	applicable 5:20	16:16	b
37:6,8,11,22,24	application 53:2	assumes 44:11	b 2:9 4:5
38:1,4,5 47:9,10	appreciate 10:8	assuming 32:6	back 18:9,15
ahead 28:10	approach 31:24	assumption	38:6 39:21,23
33:20 38:24	31:24,25	32:7	49:4,7 52:2
40:4 47:7 48:23	approaches	attached 35:2	55:25 56:2 73:3
59:6	31:11	77:11	backend 24:16
al 5:8	appropriate	attempting 32:4	based 59:10
allow 59:20	30:9 31:25	attendance 6:1	63:12
allowed 17:25	approximate	attorney 6:3	bates 32:16
45:15	9:20	17:22 75:13	61:13
alphabet 42:5	apps 54:6	76:10 77:13	bauers 46:13
amended 12:2	april 35:1	attorneys 65:13	bean 2:20
amount 62:17	architectural	65:17	beankinney.c...
63:4	24:7,19,20 25:1	audio 75:8 76:3	2:23 77:2
angeles 1:18 5:9	25:3	augment 24:14	began 8:14
11:7 64:6	architecture	august 8:18 9:8	43:14 51:11,19
answer 10:15	38:13	45:5 46:1 51:5	58:8
12:17 13:7,15	arlington 2:22	authorized 5:10	beginning 6:2
13:24 17:21	artifacts 29:1,2	automatically	8:18 59:17
26:14 34:21	aside 47:6,8	52:17	begins 42:5 73:2
40:17 43:17			

[begun - code]

Page 81

begun 38:13 behalf 2:2,16 belief 34:14 believe 19:6 31:7 35:24 73:25 bell 61:6 benson 19:11,13 19:16 20:1,3,5 20:18 21:7 22:1 22:4 best 75:9 76:5 beyond 28:7 37:24 38:22 big 33:21 bigger 14:18 15:9,14 41:18 bit 32:12 52:25 54:5 blend 60:20 blender 52:20 54:4 blessing 34:4 boca 2:6,12 bottom 14:10 42:3 46:8 boulevard 2:21 brand 19:17 brandon 3:6 4:7 6:5 32:1 35:2,10 branning 40:5 40:12,13,18 42:9 braxton 42:5	brock 19:11,13 19:15 20:1,3,5 20:18 21:7 22:1 64:4 bug 52:19,21,23 54:5,24 55:2,4,8 55:9 bugs 29:2 55:8 55:10,23 build 29:1 61:21 62:5 building 29:1 bunch 53:1 business 23:21 button 41:15	16:17 19:22 32:15 36:19 casey 42:4 cause 29:16 32:22 cc 33:17 ceased 27:6,8,11 ceo 3:6 6:8 certain 28:22 44:3 certificate 75:1 76:1 certified 5:3,16 47:14 certifies 46:14 certify 75:3 76:2 challenging 34:3 change 27:20,21 34:12 46:8 78:4 78:7,10,13,16 changed 55:9 changes 77:9 characterization 34:19 chat 63:23 74:11 chief 7:3,8 31:7 32:5,9 36:1 civil 77:24,24 claimed 55:12 clare 1:8 2:17 3:3 6:8 10:23 13:25 19:20 20:8,23 21:13	22:11 33:17 37:16,17 41:6 51:4 clare's 11:12,15 46:22 51:10 clarify 73:23 client 6:5 17:22 30:12 32:1,9 33:16 34:8,15 37:23 38:7,9 43:19,24 44:1,1 45:21 47:13,14 48:5 51:16 57:10,14,24 59:10 65:11 client's 36:5 43:14 46:5 47:2 47:3 48:9 50:23 51:12 cloud 65:8,9 coach 47:23 coaching 47:24 coats 42:6 code 16:15,17 17:6 19:21,25 20:9,16,19,24 21:1,8,14,17 22:8,8,9 25:12 25:17,19 27:2 31:21 32:3,5,10 34:4,9,10,11,15 36:5,6,8,12,25 42:24 43:14,19 43:21,21,24,25 44:2 45:5,9,13
	c c 2:1 3:1 5:1 ca 1:18 california 5:9 5:11 75:22 call 18:10 22:20 26:15 called 6:15 8:10 36:24 38:1 49:19 52:19,21 54:4 55:6 campbell 2:3 6:4 74:8 campbell.miller 2:7 care 52:10 careful 15:22 carmela 42:5 case 1:6 10:24 12:9 14:5 16:9		

[code - critical]

Page 82

45:17,18,20,24 46:1,4,5,6,10,10 46:15,19,24 47:2,4,4,12,13 48:4,9,10,13 49:21 50:23 51:12 52:8 57:14,19,24 58:2,7,18 59:19 60:2,25 61:2,21 62:5,6,7,14 cole 4:11 19:5 19:23 20:14 21:5,25 42:4 61:17,17,19 62:4 64:4 coleman 2:18 77:1 collecting 29:1,2 29:4 come 18:8 43:13 common 48:9 48:13 communal 30:7 communicating 35:9 communicatio... 16:3 companies 8:6,9 64:22 company 7:16 7:22,24 8:3 23:1 23:3 55:13 59:3 59:4,5	compiled 41:7 complete 19:24 completed 4:11 77:16 completely 52:22 compliance 16:18 comply 16:5 18:3 component 25:9 27:10 components 24:17,18 25:4,6 25:6 27:8 compound 12:16 computer 14:17 14:20 15:12 20:15,18 22:8 23:16,16,20 computers 20:10,13 23:20 concerning 36:19 concluded 74:22 conduct 36:16 confer 17:13 18:1,8 39:15 48:21 49:23 confidential 1:22 4:13 configured 60:1	confused 31:5 confusion 47:18 considered 77:17 constitute 5:24 consult 17:20 consultancy 8:10 cont'd 3:1 content 62:16 62:22 context 12:11 62:22,23 63:4 contexts 10:18 continued 38:15 43:20 continues 62:16 continuing 38:25 continuous 8:22 continuously 9:8 contract 64:18 contractors 64:22 contributions 16:8 control 26:19,20 26:22 40:8 conversation 61:4 conversations 38:11 55:21 63:15,16,20 64:11	copies 14:22 77:14 copy 46:18 73:24 correct 8:15 9:1 21:1,2 35:12 40:5 43:9,24 44:5,10 45:18 56:25 57:5 60:2 correctly 24:22 45:23 counsel 6:6,19 12:15 17:13,14 29:20 32:20 39:15 41:14 44:7,16 50:11 60:8 74:11 75:10,13 76:7 76:10 couple 35:16 course 31:14 32:5 36:16 54:1 court 1:1 65:16 73:13 cover 1:23 crashing 53:3 54:7 created 36:4,6,7 36:9,13 43:19 43:21 47:5 58:11 creates 7:12 creating 62:14 critical 35:3 52:19
---	---	--	---

[crosstalk - different]

Page 83

crosstalk 15:22 29:21 cto 8:4,18 9:7 cure 52:9 current 24:9 26:2,22 currently 24:6,7 24:19 custody 45:2 46:8 customer 37:8 38:16 customers 37:10 cv 1:7 cycle 62:24	defendants 1:11 2:16 deficiencies 52:9,13 deficiency 58:10 defined 56:14 delaney 2:18 6:6 6:6 9:25 10:2,3 10:7,13 12:16 17:17,19,24 18:10 34:18 43:16 44:6,11 44:18 47:15,20 47:22,24 48:1 48:15,20 49:13 49:22 50:7,12 50:13,24 51:8 51:13 66:7 73:5 73:6,10,11,16 73:23,25 74:3 74:16 77:1 delete 65:25 delivered 53:7 demonstrations 64:25 department 21:18 depends 26:15 deployed 35:8 35:12,13 deployment 28:3,5 deposed 6:9 deposing 77:13	deposition 1:13 5:3,6,12,22 9:10 10:23,25 11:10 11:15,18,20 13:15 14:14,16 14:18,21 19:19 32:13 41:7 44:23 46:23 53:19,24 60:22 75:1 describe 24:25 56:3 58:19 59:1 description 4:6 62:13 design 24:7,20 24:20 25:1,3 29:2 designing 31:12 desktop 24:18 destroy 46:19 46:20,24 47:2 47:13 48:6,8,14 53:24 destroyed 55:1 55:7 destroying 48:6 destruction 46:14 determine 18:1 44:4 determining 12:23 develop 24:3,5 38:25	developed 24:6 24:11 25:22,24 26:1 47:5 59:5 developer 17:11 18:20 25:12,14 31:8 32:6,6,9 40:6,19 43:8 62:2 developers 25:15,23,25 26:1 39:4,7 40:4 40:18 63:16 64:19 developing 31:23 36:17 38:18,20 development 8:13 16:8 20:24 24:22 25:11,21 28:14,17 29:4 30:9 37:22 38:1 38:21 42:21,23 43:1,7 62:24 63:4,8 64:16 devops 21:15 22:5,9 26:23 27:18,18,22,23 28:18 29:25 30:5 61:16 different 7:23 10:18,18,18 20:9 22:15 27:9 30:25 42:14 58:12,14 61:16
d			
d 4:1 5:1 21:15 daily 16:2 data 52:23 date 1:15 30:17 45:5 77:12 78:23 dated 61:20 dave 19:7 64:5 david 16:24 19:22 21:5 22:1 43:6 days 77:17 decided 30:8 decision 30:1,3 30:4,7 declare 78:20 defendant 3:3 6:7			

[difficult - experience]

Page 84

<p>difficult 32:12 41:1 dig 63:7 digital 75:8 76:3 direction 38:15 directly 18:25 director 17:3 disagreement 56:6 discovery 60:25 discussing 34:16 49:21 discussion 11:11 30:8 discussions 12:15 30:25 31:9,11,16 63:10 district 1:1,2 document 11:6 11:24 12:5 32:14 36:24 37:25 44:22 45:2,16 46:12 49:19 65:18 78:20 documents 9:23 11:8,16,21 14:19 36:18 65:13,16 doing 12:13,13 14:14,16 25:2 25:17,18 28:22 32:13 47:14</p>	<p>dot 26:6 download 45:21 45:25 draconian 30:7 dug 63:13 duly 6:15 75:5 dumpster 52:19 54:4 duties 7:7 17:6 dylan 42:4</p> <tr> <td>e</td><td></td></tr> <tr> <td> <p>e 2:1,1 3:1,1 4:1 4:5 5:1,1 21:15 77:24,25 78:3,3 78:3 earlier 35:1 easier 28:22 29:10 edward 1:8 2:17 3:3 eight 60:19 either 22:8 64:21 electronic 11:9 electronically 73:17,18 email 4:7 33:13 33:16 38:7 61:17 63:17 74:6 77:13 emailed 77:15 employed 6:25 7:1 75:11,13 76:7,10</p> </td><td></td></tr>	e		<p>e 2:1,1 3:1,1 4:1 4:5 5:1,1 21:15 77:24,25 78:3,3 78:3 earlier 35:1 easier 28:22 29:10 edward 1:8 2:17 3:3 eight 60:19 either 22:8 64:21 electronic 11:9 electronically 73:17,18 email 4:7 33:13 33:16 38:7 61:17 63:17 74:6 77:13 emailed 77:15 employed 6:25 7:1 75:11,13 76:7,10</p>	
e					
<p>e 2:1,1 3:1,1 4:1 4:5 5:1,1 21:15 77:24,25 78:3,3 78:3 earlier 35:1 easier 28:22 29:10 edward 1:8 2:17 3:3 eight 60:19 either 22:8 64:21 electronic 11:9 electronically 73:17,18 email 4:7 33:13 33:16 38:7 61:17 63:17 74:6 77:13 emailed 77:15 employed 6:25 7:1 75:11,13 76:7,10</p>					

employee 30:20
30:22 41:11
75:13 76:9
employees 41:7
41:7,21 42:2
64:19
employment
8:21
encryption
59:11
ends 66:13
engineer 19:15
42:11,13 53:4
engineers 25:4
enormous 63:3
ensure 45:14
entered 15:18
37:22 52:23
55:11
entertainment
8:1
entire 11:1
entirely 25:22
entitled 45:1
environment
65:8
epic 63:2
epics 63:11
equipment
23:12
errata 77:11,13
77:16
es 75:4
esquire 2:3,9,18
77:1

et 5:8
etchberger 43:2
event 65:2
evidence 44:12
44:12 45:1
evidentiary
5:21
exact 9:16 13:22
30:17
exactly 29:16,18
35:20 38:12
examination 4:2
6:21
examined 6:17
example 11:15
14:24 24:25
except 64:23
excuse 15:21
17:18 22:12
48:16
exhibit 4:7,11
4:13 11:24
32:14,17,18
33:2 41:5 44:23
44:24 60:11,12
60:14,22 61:11
61:12,13 66:10
exhibits 11:9,14
74:4
exists 37:3 38:4
experience 1:7
2:16 5:8 6:7 7:4
7:9,11,14,23
12:1 77:4 78:1

[explain - good]

Page 85

explain 8:23 10:10 24:24 28:13 59:20 explaining 50:8 exposed 61:1,5 exposing 59:18 60:1 62:7 extent 41:19 eyes 65:13,17	77:18,24 fell 62:25 felt 31:24 files 62:16 final 25:8 financially 75:14 76:11 find 61:9,11 findings 35:4 fine 10:14 33:9 50:10,21 66:1,2 73:19 finish 14:11 17:18 first 6:15 11:6 12:3 13:4,6,8,11 24:12,15 25:24 25:25 26:7,8,13 30:14,15 42:3 50:22 58:8 fischer 3:6 4:7 6:5 30:12 31:7 31:16,19 33:17 38:14 fixed 53:9 fl 2:6,12 77:14 florida 77:18,24 follows 6:17 30:3 font 41:16 foregoing 75:3,4 76:4 78:20 forgot 54:9 form 10:9,13 43:16 44:10,13	format 11:9 former 41:21 42:2 forward 4:9 found 57:17 four 31:14 fourth 25:25 front 53:5 59:19 60:1,25 61:22 62:5,7 full 9:14 functional 51:17,20 52:8 functionality 25:5 31:1,10 56:7,10 further 75:12 76:9	26:24 27:2,2,11 27:17,19,21 28:20 29:17 30:5 give 21:10 52:14 53:11 59:6 given 11:6,8,14 12:22 17:15 44:1 giving 44:2 go 14:5 18:6,13 26:18 27:12 28:10 29:15 33:20 34:25 38:16,24 39:17 39:18 40:4,8 47:7 48:23,24 49:1 59:6,6 61:12 73:9 74:14,18 going 10:13 11:19,22 12:14 15:11 17:21 29:17 31:4,4,5 31:20,20 32:14 32:16,23 33:11 33:12,12 34:15 41:1,4,20,23 42:3 49:22 50:14 53:23 61:8,12 65:11 66:8 73:12,14 74:5,9,13 good 5:2 6:23 6:24 74:16
f	face 64:11,11 fact 8:2 31:16 60:24 facts 14:5 44:11 78:20 factual 17:23,25 47:11,11 failed 55:10 fails 77:20 failures 16:5 52:18,19 54:3 falls 21:19,19 63:11 familiar 22:17 22:19 30:11 36:21,25 37:2,5 37:7,22,25 60:24 fast 41:23 faster 28:23 favor 14:9 feature 29:4 63:1 federal 45:18,24 46:5,10,15	g	g 1:9 2:17 5:1 gateway 59:24 general 15:16 17:5 18:2 53:3 generally 7:7 generate 57:15 57:21,23 58:3 59:8 gentleman 16:24 42:17 getting 29:20 34:4 ghostpatch 52:21 54:4 github 20:24 21:1,8 22:9

[gosh - interactions]

Page 86

gosh 53:8 government 35:9,12,14,17 35:21 36:3 37:8 37:10 38:16 45:15 52:18 56:12 58:8 great 9:10 16:22 42:19 43:12 54:2 74:18 group 1:7 2:16 5:8 6:7,8 7:4,9 7:12,14,23 8:11 8:12 12:1 77:4 78:1 guess 31:3 50:2 50:3 guessing 27:15 guidance 24:8 24:20 25:1 guys 34:5	happen 27:22 happened 29:13 29:18 39:2 53:10 happens 28:6 happy 10:10 50:8,13 happyfox 55:6 55:16,18 haptic 45:18,24 46:5,10,15 hardware 8:13 23:12 24:1 head 21:18 hear 24:22 51:22 heard 10:20 hearing 6:10 held 7:5 help 13:15,25 27:14 65:19 74:9 hereto 75:14 76:10 hide 66:6 highlight 42:3 hmm 30:16 hold 9:11 43:4 hole 57:16 hope 54:17 hosted 23:23 31:13,18,24 38:17 60:1,3 hosting 59:22	hours 45:5 house 31:12 hundreds 26:16 i idea 13:16 identical 13:4 identification 32:19 60:13 66:11 identify 6:2 immediately 57:17 implement 56:21 implementation 31:3,6 58:23 implementatio... 7:11 implemented 56:15,16,23 57:1,2,4 58:11 inc.'s 12:2 include 16:7 58:7,18 64:4 included 24:16 57:14,24 incorrect 22:21 incredible 57:16 independent 64:22 indiana 1:2 indicated 8:14 19:20 21:15 25:21 34:8 35:1 46:20,23	indicates 13:23 43:9 45:4,17 46:7 48:12 indirectly 19:2 individual 19:14 individuals 14:4 16:22 21:14 industry 7:23 7:25 informal 38:10 information 13:24 19:25 53:12 62:11,17 62:20 initially 46:8 injunction 12:3 inside 53:2 install 53:7 56:19,23 57:7 57:19 installed 57:10 57:12 instance 24:15 25:25 27:3 instructing 25:3 integrated 25:7 28:2,18,19,21 intelligently 62:12 intended 5:19 intention 21:10 interactions 30:21 38:7,9
h			
h 4:5 78:3 half 53:22 59:11 hance 19:5,22 20:14 21:4,25 64:6 hand 6:12 handed 57:25 handholding 29:5,6,8 handling 16:14 hands 28:15 42:23			

interest 7:13,16 interested 75:15 76:11 internal 22:14 22:17,20 internally 31:23 internet 59:4 interoperate 25:7 interpretation 47:9 interrogatories 12:4,9 13:3,11 13:16,24 interrogatory 12:12,22 14:2 14:23 interrupt 41:15 involved 24:13 24:14 46:3 55:20 64:24 ip 22:13,14,17 22:20 23:12 issue 16:9,16 18:2 19:21 36:19 40:15 45:17 47:6,8 66:2 issues 29:2 53:1 54:6 55:1 56:4,5 item 46:9,14 iteration 31:3 31:14,22 35:8 iterations 35:11	j j 2:3 jadc2 65:2 jeff 13:25 19:22 21:4 22:1 35:24 55:19,25 64:5 jeff's 36:1 jeffrey 1:9 2:17 jennifer 45:21 45:25 64:15 job 1:20 17:6 joel 2:9 6:4 joel.rothman 2:13 john 1:10 40:6 40:18,21 42:8 joined 20:2,6 joint 15:18 36:10,14,20 37:22,24 38:1,5 47:9 jph 1:8 june 43:9 65:3 jva 15:17,17 16:4,6	78:23 key 56:19,24 57:4,7,15,19 58:2,7,12,18 59:8,10,11 keyboard 28:7 28:16 42:24 keys 57:11,13 57:15,20,22,23 58:3 62:16 kind 60:20 kinney 2:20 kirk 43:2 know 10:13 11:22,22 13:13 14:25 15:3,3,17 16:25 17:20 18:2 19:7,11,13 19:14 22:23 23:1,5 26:5,12 27:6,10 33:14 33:23 35:15 37:2,14,18,20 38:3,5 39:12 42:15 46:4,18 46:20 48:7 49:16 50:3,4,6 50:18,19 51:12 53:14 56:2 58:24,24 60:17 61:10,24,25 62:9 63:1,9 65:25 knowledge 14:5 15:16 16:4,10	16:14,18,19 37:12 47:12 54:16 75:9 76:6 knows 37:19 49:24 50:1 korman 2:20 kornhaus 3:4 kratz 42:10
			l
			l 40:21 lacking 62:22 larger 41:16 laws 5:21 lead 17:11 18:20 43:8 leadership 30:2 leave 65:12 leaving 31:20 left 38:9 43:9 legacy 27:3 legal 48:11 49:20 77:23 leland 42:10,12 42:12 level 58:25 levels 52:25 license 31:21 34:10,16 36:25 37:6,8,11 53:1,2 54:6 56:4,5,19 56:24 57:4,6,13 57:15,23 58:3 59:8 licenses 54:6 56:4,6 57:21

[licensing - mean]

Page 88

licensing 34:3 56:8,10,12,13 56:15,19 57:11 57:20 58:14,17 lift 16:19 line 25:13 78:4 78:7,10,13,16 link 45:21,25 linkedin 7:19 8:17 list 19:24 26:17 41:6,10 42:20 43:4 52:14 54:13 listed 14:6 16:23 42:11 literally 53:4 litigation 59:18 little 29:21 32:12 61:15 llc 1:4 2:2 5:7 12:3 77:4 78:1 local 17:25 18:4 locally 20:9 located 22:24 location 1:17 65:6 locations 22:11 logging 53:6 55:8 login 53:3 54:7 54:9,10 long 7:5 longer 27:5,6 39:3,11 40:4	look 26:18,19 26:24 27:12,16 27:17,17,18,19 29:15,18 40:8 43:13 50:2 54:18,21 60:14 63:7 looked 7:19 13:4 53:14 looking 4:9 8:17 11:24 13:5 14:25 15:4,5,10 15:11 42:20 43:4 53:6,15 54:22 65:15 looks 41:3 61:15 los 1:18 5:9 11:7 64:6 losing 41:23 lost 33:11 52:24 lot 63:12 love 64:15	maintain 53:23 54:19 maintained 20:9 54:25 maintains 23:1 23:5 24:1 54:21 55:13 maintenance 16:15 major 54:11 make 15:9 28:22 31:22 41:16 43:15 49:25 51:11,19 51:20 52:8 58:9 making 41:18 74:2 man 18:22 manage 29:11 manager 59:9 59:14 manner 5:22 map 4:13 62:16 maps 62:6,15 mark 32:14,16 32:21,24 42:16 42:17 60:6,11 65:16,24 marked 11:24 32:18,22 33:3,4 41:5 44:23 60:12,17 65:13 65:24 66:10 mase 1:9 2:17 13:25 19:22	21:4 22:1 35:24 37:18,19 55:19 55:25 64:5 mase's 44:23 master 57:19,22 58:2,6,18 matt 42:6 matter 5:7 matters 16:6,7 16:20 73:13 max 1:4 2:2 3:6 5:7 6:5 12:2 16:3 36:10,15 37:23 45:25 46:9 51:16 52:9 52:9 54:25 55:1 55:7,9 56:6,13 56:14 64:20,21 64:23 77:4 78:1 max's 16:4,4,5 mcaldin 1:19 5:3 15:25 18:7 29:23 39:17 48:25 52:2 73:14 74:6 75:2 75:21 mccluskey 33:18 mccutcheon 43:6 mean 17:24 18:4 27:20 28:4 28:5,12 56:9,9 58:24,24 63:3 64:21
	m		
	machines 23:24 madame 65:16 65:19 made 15:14 27:20,21 30:1,4 52:7 61:1 magnopus 7:21 7:21 8:7 mahoney 42:16 42:17 main 25:13		

[meanings - objection]

Page 89

<p>meanings 10:18 means 5:23 8:23 9:24 24:24 28:6 28:11 45:9,12 45:13 61:24 meant 57:6 media 8:1 memory 14:1 34:7 42:20 51:6 mention 54:14 65:23 mentioned 13:17,18 64:14 merge 25:13 message 63:23 met 30:12,14,15 method 57:1,3 microsoft 23:25 28:20 63:23 microsoft.com 61:17 middle 27:25 31:15 34:1 38:18,20 mike 46:13 miller 2:3 6:5 minds 1:4 2:2 3:6 5:7 6:5 12:3 45:25 46:9 51:16 52:9,10 54:25 55:1,7,9 56:7,13,14 64:20,21,23 77:4 78:1</p>	<p>minimum 35:3 minor 54:12 minutes 53:5 mischaracteri... 44:12 mkk 1:8 mm 30:16 modifications 43:15 51:11,19 52:7 58:9 modules 25:18 moment 35:17 40:7 41:11 49:8 60:14 money 39:6 months 9:4,17 9:18,19 13:20 move 29:13,25 30:5 33:15 34:25 50:21 moved 27:23 mullican 1:9,14 2:17 4:8 5:6 6:8 6:14,23 8:10,12 10:16 12:18 16:13,17 18:18 40:15 44:14 47:8 48:4 51:1 51:15,20 59:2 61:2 73:6,9 77:4 77:8,10,12 78:2 78:23 multiple 47:7,7 52:11,18 54:3</p>	<p>n n 2:1 3:1 4:1 5:1 name 5:2 14:6 19:13,15 40:6 40:11,19 41:10 41:11 43:8 named 16:24 18:22 42:10 names 39:10,12 40:3 nature 31:8 necessary 25:4 25:6 57:15 63:5 need 17:13,16 17:20 35:3 48:20 54:21 62:23 63:7 73:15,19 74:3,9 needed 27:16 38:17 56:24 57:6 needs 18:3 23:16 25:13 neither 75:10 76:6 network 53:8 networks 22:22 22:23 never 43:18 53:7 56:16 61:4 new 19:17 55:11 66:7 nonconfidential 66:12 73:1</p>	<p>notary 5:10 75:21 note 77:10 notebook 53:13 53:18 notepad 52:23 52:24 54:5 notes 53:13,18 53:19,21,24 60:20 61:1,5 notice 32:21,25 33:1 notion 31:13 november 1:15 5:8 77:3 number 14:4,6 26:2,5,8 30:25 31:9 36:18 38:10 45:19 46:9 61:13 65:20 numbers 32:16 numerous 54:14 54:15</p> <p>o</p> <p>o 5:1 21:15 40:21 oaths 5:11 object 50:15 objecting 44:9 47:25 objection 5:14 6:11 9:25 10:2,4 10:6,11,12 12:16 34:18</p>
--	--	--	---

[objection - owns]

Page 90

43:16 44:6,8 47:15 49:24 50:24 51:8,13 objections 10:10 12:2,9 obligations 16:6 18:4 obtain 34:9 obtained 43:14 43:23,25 45:4,5 45:9 50:22 occasional 24:8 occasions 11:21 occur 27:24 occurred 57:12 october 10:24 office 73:9 officer 5:2,3,12 6:10,18 7:3,8 10:1,5 15:21 18:12,15 20:4 29:6,9,20 32:20 32:25 33:2,5,7 36:1 39:18,21 39:25 40:1,14 41:14 44:7 49:1 49:4,8,10,12 50:11 51:21 52:3,4,6 60:7 65:21,23 66:3 73:3,8,21 74:2 74:10,13,18 75:1,2 officiated 1:19	oh 8:23 19:17 39:7 41:1 42:2 51:22 53:17 60:22 66:1 okay 7:19,24 8:2,6,12,17,23 9:4,7,10,15,19 9:22 10:5,23 11:4,19,19 12:11 13:2,8,10 13:13,23 14:4,9 14:12,14,17,22 15:5,9,13,16 16:10,13,22 17:5 18:6,12,18 19:2,5,7,11,14 19:19 20:8,12 20:15,23 21:3,7 21:10,20,25 22:7,11,16,23 23:10,15,19,25 24:3,5,19,24 25:9,20 26:10 26:12,17 27:1 27:13,16,20 28:4,9,25 29:19 30:11,14,18,21 32:1,8,12 33:5,5 33:11,13,20,23 34:1,7,14,25 35:11,15,18,23 35:25 36:8,13 36:18,24 37:5 37:10,21 38:6 38:19 39:2,16	39:18,21,23 40:11,25 41:4,4 41:5,13 42:15 42:19,25 43:3,8 43:12,12,23 44:22 45:1,8,12 45:16,20,23 46:4,7,13,18,22 47:1,19 48:11 48:23 49:1,4,6,8 49:12,19 50:4 50:21 51:4,10 51:19,25 52:13 53:14,18,21,25 54:10,15,20 55:20,25 56:3,9 56:18 57:6,9,18 57:22 58:11 59:2,8,13,16,25 60:5,15,16,24 61:4,8,10,11,12 61:16,20 62:9 62:13,20,23 63:7,15,22 64:2 64:9,15,24 65:11,14,22 66:3 73:3,8 74:2 74:13,18 old 55:10,11 once 33:23 ones 21:3 48:7 ongoing 56:6 online 62:7 operate 8:10 30:6	operating 36:1 operations 7:10 17:3 opinion 48:11 48:19 49:16,20 50:6 order 44:3 51:20 52:8 56:23 57:7 63:2 63:5 73:15 ordering 73:24 77:15 organization 7:17 30:3 31:9 39:11 original 73:8,13 originally 56:11 outcome 75:15 76:11 outside 22:7 64:18 own 30:6 38:18 38:20 43:21 65:5 owned 23:23 36:7,9,13 43:20 48:9,13 owner 49:20 ownership 7:13 7:16 16:9 owning 36:17 owns 23:25 28:20
--	--	---	---

[p - produced]

Page 91

p	patch 57:17	pieces 31:17	present 3:2
p 2:1,1 3:1,1 5:1	penalties 78:20	place 33:11	president 7:20
21:15 40:21	pending 17:15	64:10,13	press 41:15
p.a. 2:4,10	people 19:2,3,20	placed 1:22	previous 29:16
p.c. 2:20	19:24 20:25	plaintiff 1:5 2:2	previously 12:7
p.m. 1:16 5:5	21:3 42:8,10,22	platform 25:8	12:8 32:22 33:3
18:13,16 39:19	42:25 64:2,3,9	31:10,14	33:4 41:5
39:22 49:2,5	perfectly 10:14	please 6:2,12	prior 60:22 75:4
73:4 74:19,21	66:2	15:23 18:19	prioritization
page 4:2,6 13:4	performance	28:13 33:14	63:11,12
13:6 41:21 42:3	16:3	39:24 44:20	private 22:22,23
42:7,8 53:22	period 8:24 9:2	47:22 49:7	57:15 59:11,24
61:9,12,13 78:4	9:13 38:11	51:25 52:3	privilege 17:22
78:7,10,13,16	perjury 78:20	53:24 59:21	18:2 48:21
pages 1:22	permitted 5:19	74:8,12 77:12	probably 37:15
53:21	person 18:23,25	plus 41:15	problem 15:10
paper 11:8	21:16 63:25	point 43:23	54:4
14:22	person's 28:15	points 43:25	problems 11:23
paragraph 34:2	ph 42:11,12,12	portion 65:15	53:9 54:7,11,12
parcel 28:17	43:2,6 46:14	66:12 73:1	procedural 5:20
parent 7:16	63:2,11 64:15	position 7:5	procedure
part 11:2 25:11	phillip 40:5,11	35:25 36:1	77:24,24
28:15,16 36:5	40:18 42:9	possession 32:2	proceeded 63:9
46:25 61:1	phone 14:15,16	poulous 40:6,18	proceeding 1:17
particular	15:10 32:13	40:21 42:9	5:5,18 74:21
47:16	41:2	powerline 2:5	76:4
parties 5:12,15	physical 23:2,5	2:11	proceedings
15:18 36:20	23:8,12,16,20	precise 49:14	75:3,4,5,8 76:5
75:11,14 76:8	23:20	precisely 56:14	process 25:12
76:10 77:15	physically 22:24	preliminary	28:17 29:3 46:3
partner 9:22,24	64:7,10	12:3	63:4
10:17,21	picked 27:18	preparation	produce 32:15
parts 11:3,14	piece 25:12	13:14	produced 5:17
past 24:6,11	54:19,20	prepared 76:3	32:15
59:5 64:25			

[profile - remember]

Page 92

profile 7:19 8:17 project 42:14 property 45:1 provide 24:7,20 25:1,5 provided 13:24 42:22,25 43:7 providing 31:2 51:17 prysm 30:20,22 31:1,1,6,20,24 32:2,5,9 34:4 35:4,5,9 38:9 public 59:11,11 75:21 publicly 59:18 59:23,25 pull 4:11 purpose 44:2 46:8 purposes 12:23 put 10:3 41:3 59:24 74:10 putting 47:6,8	40:17 44:13,15 44:17,19,20 47:11,11,21,25 48:2,18,21 49:7 49:14,17 50:18 51:23,24 52:1 questions 11:5 13:7 65:12 73:6 quickly 18:5	73:13 reappear 53:9 reason 45:4,8 77:10 78:6,9,12 78:15,18 reasonable 77:17 rebecca 3:4 recall 9:3,6,16 10:22 13:3,10 13:18,21 30:24 40:7,19 50:22 62:5 recalling 53:17 receipt 77:17 receive 47:12 48:4 received 45:20 45:24 48:12 recent 8:19,20 recently 13:19 recollection 34:13 record 5:4,5,15 6:2 10:4 18:7,13 18:14,15 39:17 39:19,20,22 40:1 48:24 49:2 49:3,5,10 52:4 73:4 74:15,19 75:9 76:5 recorded 5:22 75:6 recording 5:17 75:8 76:3	recoverable 55:14 recovered 55:23 reduced 75:6 reference 9:24 referenced 77:6 referred 9:22 10:20 referring 22:15 26:21 36:8,10 36:12 40:3 47:16,17 refers 62:13 refresh 14:1 34:7 51:5 refreshes 42:20 regard 77:19 regarding 15:17 16:3 54:6 56:4,5 regards 31:1 38:13,16 45:10 53:1 55:1 56:7 regularly 35:10 related 16:6,7 29:16 75:10 76:7 relating 49:20 relationships 36:19 relative 75:13 76:9 release 61:1,5 remember 9:5 9:19 26:7,11 30:14,17,18,21
q			
q&a 25:17 qualified 75:7 question 10:8 10:15 12:20 13:1,7,8,11 17:15,23,25 18:19,20 23:19 26:14 29:17 34:23 39:24	r r 2:1 3:1 5:1 78:3,3 raighne 2:18 6:6 73:5 77:1 raise 6:12 ran 59:3 randomly 52:20 rate 52:25 54:5 rather 46:19,24 47:2,13 raton 2:6,12 rdelaney 2:23 77:2 read 14:9 15:15 16:11 33:13,20 33:23,25 36:21 37:3 39:23 41:17 46:22 49:6 52:2 62:18 73:7 77:8 78:20 reading 14:11 14:13 25:17 33:14 53:11,15 really 14:14 18:1 30:6 41:1		

[remember - satisfactorily]

Page 93

<p>31:19 35:4 38:8 39:7,12 40:23 41:10,11 43:10 52:15 remote 1:17 64:1 remotely 5:13 remove 58:9 removed 52:17 54:3 removing 62:15 repeat 18:19 40:16 44:20 repeated 16:5 40:1 49:10 52:4 report 17:8,9,9 19:2,3,9,10 reporter 65:17 65:19 reporting 53:1 54:6 56:4,5 reports 18:21 18:24,24,25 19:4,6,7,11,18 61:19 repository 21:17,21 22:2,5 representative 3:4 request 4:12 requested 40:2 49:11 52:5 56:25 75:24 requests 29:4</p>	<p>required 53:4,8 56:12 57:4 requires 56:19 reserved 74:20 resources 23:14 23:15 respect 29:25 response 13:23 16:23 responsibilities 7:8 responsibility 21:19,21 responsible 7:10 21:16 35:20 rest 28:3,4 30:8 60:15 restart 53:5 results 35:2 retain 47:13 48:8,14 retained 46:18 48:6 return 4:10 returned 77:16 reveal 17:21 review 11:2,9 12:13,23 25:15 25:16 41:9 75:24 77:7 reviewed 10:25 11:1,3,14 12:7,8 12:11 13:2,19 25:14</p>	<p>reviewing 13:3 13:10,14 14:1 25:19 reviews 24:8,21 25:1,9 revision 26:19 26:20,22 40:8 right 6:12 10:20 11:4,19 12:7 13:13 14:6,22 18:11,22 23:17 33:20 36:15 37:1,21,25 38:22 40:25 42:19 44:2 45:21 47:6 48:20 49:22 50:5,21 53:15 57:7 60:19 61:18,20 65:9 65:10 rights 47:10 ring 61:6 road 2:5,11 rob 6:7 33:17 37:15 robert 1:8 2:17 3:3 13:25 root 62:15 rothman 2:9 4:3 6:4,4,20,22 10:3 10:9,12,19 12:17,21 15:24 16:1 17:18 18:6 18:17 20:7</p>	<p>29:12,22,24 32:23 33:1,4,6,8 33:10 34:20,24 39:16,23 40:3 40:10,20 41:18 42:1 43:17,22 44:9,14,21 47:19,22 48:1,3 48:16,17,23 49:6,18 50:5,10 50:20,25 51:3,9 51:14,18,24 52:2,12 60:9,10 65:9,22 66:1,5,8 73:12,18 74:1,5 74:12,17 rule 77:24,25 rules 5:21 17:25 18:4 77:18 run 44:4 running 22:12 23:21 25:18 65:5,7 ryan 45:21,25 76:2,19</p>
			<p>s</p>
			<p>s 2:1 3:1 4:5 5:1 21:15 40:21 78:3 sabrina 19:5,22 20:14 21:4,25 64:5 satisfactorily 16:5</p>

[saw - sorry]

Page 94

<p>saw 38:7</p> <p>saying 18:18 31:19 36:9 50:15</p> <p>says 15:7,16 16:2,4,13 34:2 46:12 62:3,18 62:19</p> <p>scan 35:3 46:10 52:18 54:3</p> <p>scanning 45:5,9 46:1,5,6</p> <p>scenario 59:12</p> <p>scheme 56:12 56:13,15,19 58:14,17</p> <p>screen 11:20 12:6 14:18 15:12 33:12 44:24 52:21,22</p> <p>script 62:14</p> <p>scroll 14:11 33:15 41:12,20 42:7 46:7 60:15</p> <p>seal 16:19</p> <p>sean 33:17</p> <p>second 12:2 24:13 34:2</p> <p>secrecy 16:15</p> <p>secret 59:9,14</p> <p>secrets 16:16 59:9</p> <p>secure 16:14 58:17</p>	<p>security 16:15 29:7,10 44:4 57:16 58:10 59:4</p> <p>see 12:4,5 13:8 14:7,19 15:6,8 26:17 27:18 29:15 33:18 34:1,5 41:1,9,10 41:13 42:9 44:24 45:2,6 46:11,12,16,22 46:25 60:15 61:9,22 62:24</p> <p>seeing 11:23</p> <p>seen 9:22 49:19 50:6,14 55:23 56:1,1</p> <p>send 73:11 74:5</p> <p>sent 11:8,17 46:9</p> <p>separate 1:23 59:9,13 64:22</p> <p>september 51:5</p> <p>server 24:16</p> <p>servers 22:12,15 22:17,19,24 23:2,6,8,10,11 23:23 24:1 59:18</p> <p>service 60:4</p> <p>services 24:12 43:7 59:22,22</p> <p>serving 23:9</p>	<p>set 12:3,8 13:3 13:10</p> <p>seven 64:3,14</p> <p>several 19:3 31:17 36:16 54:24</p> <p>share 11:20 33:12</p> <p>shared 52:24 54:25</p> <p>sharing 14:12</p> <p>sharp 76:2,19</p> <p>shawn 18:22,23 19:18,23 20:14 21:5,24 64:5</p> <p>sheet 77:11,13</p> <p>shield 65:2</p> <p>ship 30:7</p> <p>short 52:14</p> <p>show 11:6,20 40:25 41:4 44:22 52:21 60:5 61:8,11 65:18</p> <p>showed 31:16 33:2</p> <p>showing 12:5 13:6 14:19,23 32:21</p> <p>shown 41:6</p> <p>sign 77:12</p> <p>signature 74:20 75:20 76:18</p> <p>signed 46:13 77:21</p>	<p>sinnk 16:24 19:7,22 21:5 22:1 64:5</p> <p>sir 10:6 43:17</p> <p>sitting 53:4</p> <p>six 19:20 20:25 21:3 64:2</p> <p>skills 75:9 76:6</p> <p>slack 63:23</p> <p>small 14:13 15:8 28:15</p> <p>smaller 15:11</p> <p>software 8:13 16:8,10,14,16 17:6 19:15,21 22:12,13 23:9 23:22 24:3,5,8 24:14,22 25:11 25:12,22,22 28:8,13,14,17 29:3 36:4,17 37:7 42:11,13 42:21,23 43:1,7 44:3 51:17 52:8 53:5 56:11,24 57:7,9,12,20 58:9 59:3,4,4,5 64:16,18,25 65:5,7</p> <p>solution 38:17</p> <p>solutions 77:23</p> <p>somebody 14:24</p> <p>somewhat 10:8</p> <p>sorry 12:8,25 14:13 15:2,24</p>
---	---	--	---

[sorry - teg]

Page 95

17:14 20:4 29:22 32:23,24 38:24 40:14,16 40:24 41:14,22 42:2 47:7 50:11 60:18,20 sounds 27:21 29:13 source 16:14,17 19:21,24 20:8 20:15,19,24 21:1,8,14,16 22:8,8,9 25:17 25:19 27:2 31:21 32:2,5,10 34:4,9,10,11,15 36:5,6,8,12,24 43:14,19,21,23 43:25 44:2 45:4 45:9,13,17,18 45:20,24 46:1,4 46:5,6,9,10,15 46:19,24 47:2,3 47:4,12,13,17 48:4,9,10,13 49:21 50:23 51:12 57:11,14 57:18,24 58:2,7 58:18 59:19 60:2,25 62:6,7 62:14,15 sources 62:15 southern 1:2 speak 18:3 55:15	speaking 4:9 15:22 specific 11:17 specifically 31:19 58:19 62:15 specifications 56:16,17 57:2 speculate 37:19 speculating 35:19 43:11 spelling 40:23 spend 14:25 15:5 spinner 53:3 54:9,10 spoke 55:18 spreadsheets 54:25 sriplaw 2:4,10 3:4 sriplaw.com 2:7 2:13 staff 39:3 stand 39:25 49:9 52:3 start 31:4 33:12 50:8 started 38:21 state 75:22 stated 78:21 statement 40:16 51:23 states 1:1	statute 77:18 stenographic 5:23 stipulation 5:24 16:18 storage 59:14 stored 59:9 stories 63:8 story 61:21,24 61:25 62:1,3,25 63:9 streaming 24:17 strip 61:21 62:4 strips 62:14 strongly 31:23 subject 4:8 61:21 subsidiary 7:17 substantial 16:7 sufficient 62:17 suggested 77:16 suggesting 31:23 suite 2:5,11,21 supervise 61:18 61:19 support 42:23 43:1 supposed 48:5,7 sure 10:9 14:3 26:14 43:5 49:25 50:17 52:16 54:23 58:25 74:2	swear 5:13 6:11 sworn 5:15 6:15 75:5 system 26:19,20 26:22 28:3,5 40:8 52:20 55:9 55:11,11,13 systems 55:10 t t 4:5 78:3,3 take 5:4,10 45:13 60:14 63:7 taken 5:7 9:10 10:24 53:21 75:3,12 76:8 takes 10:17 talk 17:14,16 35:20 talked 21:4 64:2 talking 23:11,22 25:20 27:1 31:4 55:4 61:10 team 30:9 52:10 64:1 teams 63:23 technical 7:3,8 7:10,11 17:3 21:18 30:2 40:15 58:23,25 technology 7:20 8:2 teg 7:17 8:4,7,14 8:21,25 9:7,14 9:23 10:21 17:2
--	--	--	--

[teg - typing]

Page 96

17:4,10 18:23 19:15 22:7 23:4 23:5,21 24:3,12 25:23,23,24 26:1 36:2,11,15 37:23 40:4 41:8 43:9,14,18,23 43:25 44:3 45:23 46:4,6,10 46:14,14,18,23 47:1,3,4,10,11 47:19 48:4,12 49:20 50:22 51:11,19 52:7 55:15 56:7 59:25 61:14 63:16 64:18,19 64:22,25 65:5,7 teg's 16:7,9,14 16:18 59:18 telephone 63:20 63:21 telephonic 38:10 tell 6:16 7:7,24 12:14 14:10 15:6,7 18:7 24:5 28:4,12 29:18 30:24 38:11 39:14 41:3 45:12 54:13 59:2 62:1 telling 35:6,7 ten 53:5	term 10:17 terms 24:21 34:8 36:14 testified 6:17 20:23 21:13 51:4 testifying 75:5 testimony 19:19 44:13 46:23 51:11 77:8,17 text 63:23 thank 6:10,18 6:20 29:9 33:7,8 41:19 43:12 54:2 59:16 60:9 74:12 thing 30:9 50:12 58:8 60:18 things 11:23 16:11 17:7 28:22 63:3,13 think 8:14 10:3 10:12 18:4 29:15 34:2 44:9 47:18 49:16 54:11 55:6 60:17 61:10 74:13,16 third 24:14 31:3 31:5 40:6,19 41:11 thirty 60:19 thought 10:7 60:18,21	thread 33:13,16 35:1 three 20:9 22:15 22:19 26:6 thursday 73:20 tightly 28:2,18 28:19,20 time 1:16 6:1 8:3,24 9:13,14 13:21 14:25 15:3,5 18:7 30:15 31:2 38:8 38:11 39:16 43:13 45:5 48:5 48:25 50:16 timeframe 9:16 13:22 times 27:9 31:17 32:11 title 7:20 12:1 together 60:21 told 32:11 ton 73:13 top 33:16 topics 63:12 touch 73:22 towards 59:17 track 29:3 tracker 55:4 trackers 54:24 55:2 tracking 35:21 55:9,9 trade 16:16	transaction 45:10 transcriber 76:1 transcript 5:17 10:25 11:1,2,3 11:12,13 66:12 73:1 74:4 75:24 76:3,4 77:6,20 transcriptionist 75:7 transcripts 77:14 transfer 55:10 triangle 1:7 2:16 5:7 6:7 7:3 7:9,11,13,22 12:1 77:4 78:1 trouble 14:13 true 16:10,19 27:22 75:8 76:5 78:21 truth 6:16,16,17 try 15:9 31:21 41:4 59:7 trying 13:15 28:11 tuesday 1:15 5:8 turn 58:7 two 13:20 18:8 26:6 34:4 38:25 59:3 64:25 typewriting 75:7 typing 28:7 42:24
---	---	---	--

[u - withdrawn]

Page 97

u	unresponsive 52:22	veritext.com 77:14	21:5,24 64:5
u 40:21	unusable 52:25	version 24:9,13	want 10:9 11:4
ultimately 21:19	use 26:25 27:3,5	24:13,15 25:24	15:5 16:23
30:3	27:6 31:22 58:6	26:1,2,3,5,7,8	32:20 33:3
unable 52:10	used 27:7,8,11	26:13,15 31:2	49:25 50:5,7
under 1:22 5:20	58:2 64:18	35:13,15 45:11	54:13 65:18,24
16:6 18:4 45:4	77:20	45:24 46:15	65:25
47:10 63:1,11	user 37:5,7,9,10	47:16 56:15	wanted 26:17
77:18 78:20	37:11 61:21,24	versions 26:12	31:10 35:19
understand	61:25 62:1,3,25	26:18 31:5	38:16 41:9
5:16 9:23 10:16	63:8,9	35:16,21 47:17	56:14
11:7 12:14,19	users 52:17 54:3	vice 7:20	wants 34:21
13:1 28:11	uses 5:19 20:12	video 24:17	way 27:4 34:21
34:22 44:18	23:21	52:25 54:5	41:24 54:14
45:8,23 48:1	using 22:13 36:5	videoconferen...	63:22
49:17 58:1	36:6,14 54:24	2:3,9,19 3:3,5,7	we've 47:4
62:18,21 63:14	usually 63:21,25	view 23:24	49:21
understanding	v	virtual 23:11,24	web 24:15 31:13
20:10 32:8	v 1:6 21:15 77:4	24:17	31:18,24 38:17
34:12 51:10	78:1	vjoc 24:8,9,10	59:18 60:3
56:18,20 57:9	va 2:22	24:12,12,15,21	week 13:20 20:1
73:14	vague 10:8	25:2,5,20,22,24	20:6
understands	valenci 1:19 5:3	26:1,3,12 31:2	weekly 16:2
47:20	75:2,21	31:13,22 35:8	weeks 13:20
understood	valiant 65:2	35:11,13 36:3	westbrook 42:4
38:6 45:16 57:3	various 27:8	vp 8:2	whitman 4:11
unintelligibly	venture 15:18	vs 5:7	19:5,23 20:14
14:12	36:10,15,20	vulnerabilities	21:5,25 42:4
united 1:1	37:24 38:5 47:9	44:5 45:14,15	61:17,17,19
unlicensed	verified 59:10	w	62:4 64:5
56:11	verify 77:9	wait 18:9	wilcox 42:4
unrecoverably	veritext 5:4	wakefield 18:22	wilson 2:21
52:24	73:21 77:14,23	18:23 19:4,18	wish 15:4 25:13
unrelated 7:22		19:23 20:14	withdrawn
			37:21

[witness - years]

Page 98

witness 5:13,15 5:16 6:11,15 10:17 12:19 20:6 29:7,10 34:22 40:5,17 41:17,22 43:18 44:16,20 47:23 47:25 48:2 49:15 50:17 51:2,16,22,25 52:7 75:4 77:20	y
words 23:25	yeah 10:12 15:15 33:6,8,8 39:13 41:18,22 42:18 66:5,8 73:17,18,25 74:1,3
work 8:2,7 9:14 25:10 31:21 34:5 40:4	year 27:13,13 27:25 29:13 38:19
worked 42:21 43:18,20	years 9:4,17,20 36:16 52:11 53:10 59:3 64:25
working 8:25 9:7 35:4,5 38:14 39:4 42:13	
works 19:14 21:20	
write 17:6 74:8	
writing 24:14 28:7,7,13 31:15 31:18	
written 5:24 54:15	
wrong 32:7 60:18	
wrote 24:12,15	
x	
x 4:1,5 75:24	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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